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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DECLARATION OF BRANDON R. McKELVEY IN SUPPORT OF DEFENDANT'S MOTION FOR A PROTECTIVE ORDER UNDER FEDERAL RULE OF CIVIL PROCEDURE 26(c)** **Date:** **May 16, 2008** **Time:** **10:00 a.m.** **Courtroom:** **A – First Floor** **Judge:** **Hon. Anthony J. Battaglia**

I, Brandon R. McKelvey, declare:

1. I am an attorney at law licensed to practice in the state of California with the firm Seyfarth Shaw LLP, attorneys of record for defendant Spherion Atlantic Enterprises, LLC ("Spherion"). I state the following facts based on my personal knowledge. If called upon, I could and would testify competently to the matters set forth herein.

2. On September 25, 2007, plaintiff filed a class-action complaint seeking to represent all "current and former California-based, hourly non-exempt employees" employed by Spherion from September 25, 2003 to the present. The complaint alleged state-wide violations of California's wage-and-hour laws related primarily to the payment of overtime, business expenses, and the provision for meals and rest periods. Attached hereto as **Exhibit A** is a true and correct copy of the complaint.

3. On December 19, 2007, plaintiff filed a First Amended Complaint ("FAC") making the same allegations while adding a cause of action for penalties under the California Labor Code Private Attorney General Act of 2004. Plaintiff's FAC estimates that there are 50,000 members in the proposed class. Attached hereto as **Exhibit B** is a true and correct copy of plaintiff's FAC.

4. On February 5, 2008, at the Early Neutral Evaluation conference, counsel for the parties met informally and discussed discovery. At that time, counsel for Spherion expressed the company's position that class-wide discovery was premature. Counsel for plaintiff indicated that plaintiff would proceed with class-wide discovery. No resolution was reached and the Court issued its Order Following Early Neutral Evaluation Conference specifying dates by which the parties' joint discovery plan was to be submitted. Attached hereto as **Exhibit C** is a true and correct copy of the Order Following Early Neutral Evaluation Conference dated February 7, 2008.

5. On February 8, 2008, plaintiff served requests for production of documents seeking (among other things) state-wide discovery of "any and all documents" from January 2003 to the present "pertaining to" policies and procedures, training manuals, employee handbooks, meal-and-rest-period compliance and studies, and other employment information for all non-exempt California former and current employees. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff's Request for Production of Documents (Set One).

6. On February 8, 2008, plaintiff also served interrogatories seeking (among other things) state-wide information including the names, addresses, employment dates, job titles, and job descriptions of all Spherion's California employees from September 2003 to the present. The interrogatories also requested detailed information about various policies for all non-exempt employees in California from September 2003 to the present. Attached hereto as **Exhibit E** is a true and correct copy of Plaintiff's Interrogatories (Set One).

7. On February 29, 2008, in accordance with the Order Following the Early Neutral Evaluation Conference, the parties met and conferred via telephone regarding discovery issues and attempted to resolve their discovery disputes. At that time, counsel agreed there was a

dispute as to the nature and scope of class discovery that could not be resolved between the parties, and the dispute would have to be brought to the attention of the magistrate. The parties agreed that Spherion would respond to Special Interrogatory Number 1 and Request for Production of Documents, Number 3 by March 12, 2008. The due date for the remainder of the responses to plaintiff's written discovery was extended to April 2, 2008. Attached hereto as **Exhibit F** is a true and correct copy of an e-mail from plaintiff's counsel memorializing the agreement.

8. On March 10, 2008, the parties' Joint Discovery Plan was submitted to the court. In the Joint Discovery Plan, the parties brought the class discovery dispute to the magistrate's attention and briefly outlined their respective positions on the issue. Attached hereto as **Exhibit G** is a true and correct copy of the Joint Motion Regarding Parties' Discovery Plan.

9. On March 12, 2008, Spherion timely served responses to Request for Production of Documents, Number 3. Attached hereto as **Exhibit H** is a true and correct copy of Spherion Atlantic Enterprises, LLC's Response to Plaintiff's Requests for Production of Documents (Set One), Request Number 3.

10. On March 12, 2008, Spherion timely served responses to Special Interrogatory Number 1. Attached hereto as **Exhibit I** is a true and correct copy of Spherion Atlantic Enterprises, LLC's Response to Plaintiff's Interrogatories (Set One), Interrogatory No. 1.

11. On March 19, 2008, plaintiff sent me a meet-and-confer letter stating plaintiff's position on state-wide class discovery. Attached hereto as **Exhibit J** is a true and correct copy of the meet-and-confer letter sent by David A. Huch and dated March 19, 2008.

12. On March 21, 2008, a case management conference was held with the Honorable Magistrate Anthony Battaglia. At the conference, the dispute between the parties regarding state-wide discovery was discussed. The parties agreed that no further meet and confer was necessary, and the issue was ripe for the magistrate's review. The Court issued an order setting a hearing on defendant's motion for protective order for May 16, 2008. Attached hereto as **Exhibit K** is a true and correct copy of the Order Following Case Management Conference.

13. Following the Case Management Conference, I confirmed with plaintiff's counsel, David A. Huch, that Spherion would not be responding to his meet-and-confer letter because a hearing on the Motion for Protective Order was scheduled by the court. Plaintiff's counsel concurred. Attached hereto as **Exhibit L** is a true and correct copy of the e-mails exchanged between counsel.

14. On April 2, 2008, Spherion timely served responses to the remainder of Plaintiff's Request for Production of Documents, per the agreement previously reached with plaintiff's counsel. Attached hereto as **Exhibit M** is a true and correct copy of Spherion Atlantic Enterprises, LLC's Response to Plaintiff's Request for Production of Documents (Set One).

15. On April 2, 2008, Spherion timely served responses to the remainder of Plaintiff's Interrogatories, per the agreement previously reached with plaintiff's counsel. Attached hereto as **Exhibit N** is a true and correct copy of Spherion Atlantic Enterprises, LLC's Response to Plaintiff's Interrogatories (Set One).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 18, 2008, at Sacramento, California.

Brandon McKelvey

Exhibit A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
STREET ADDRESS: 330 West Broadway
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME: Central
TELEPHONE NUMBER: (619) 685-6022

PLAINTIFF(S) / PETITIONER(S): Philip J Martinet

DEFENDANT(S) / RESPONDENT(S): Spherion Atlantic Enterprises LLC

MARTINET VS. SPHERION ATLANTIC ENTERPRISES LLC

NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2007-00075612-CU-OE-CTL

Judge: Charles R. Hayes

Department: C-66

COMPLAINT/PETITION FILED: 09/25/2007

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

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Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2007-00075612-CU-OE-CTL CLASS ACTION **CLASS ACTION COMPLAINT FOR COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, RESTITUTION, & DISGORGEMENT OF PROFITS:** **1. Unlawful Deductions of Earned Wages In Violation of Labor Code §§ 204 & 221;** **2. Failure to Pay Overtime In Violation of Labor Code §§ 510 & 1194;** **3. Failure to Provide Meal Breaks, Or Compensation in Lieu Thereof (Labor Code §§ 226.7, 512; Cal. Code Regs., Title 8 § 11040);** **4. Failure to Provide Rest Periods, Or Compensation in Lieu Thereof (Labor Code § 226.7; Cal. Code Regs., Title 8 § 11040);**

5. **Failure to Reimburse for Reasonable Business Expenses (Labor Code § 2802);**
6. **Failure to Provide Properly Itemized Wage Statements (Labor Code § 226, 226.3);**
7. **Failure to Pay Compensation at Time of Termination In Violation of Labor Code §§ 201-203;**
8. **Unlawful and Unfair Business Practices (Business & Professions Code § 17200 et seq.)**

Plaintiff, PHILIP J. MARTINET, on behalf of himself, all others similarly situated, and on behalf of the general public, alleges causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES

1. Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), is a competent adult who resides in the City of San Diego, County of San Diego, State of California. From his date of hire, at or around July 1, 2007 to until his date of separation of employment at or around August 18, 2007, PLAINTIFF was employed as a non-exempt, hourly employee by Defendant SPHERION ATLANTIC ENTERPRISES LLC in the County of San Diego, State of California.

2. PLAINTIFF is informed and believes that Defendant SPHERION ATLANTIC ENTERPRISES LLC is a Delaware limited liability company with its principal place of business in Fort Lauderdale, Florida. At all times mentioned herein, Defendant SPHERION ATLANTIC ENTERPRISES LLC was doing business in the State of California through its ownership and operation of numerous recruiting and staffing offices throughout California, as well as recruiting and employing thousands of California employees. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, SPHERION ATLANTIC ENTERPRISES LLC employed PLAINITFF and exercised control over PLAINTIFF's wages, hours and working conditions.

3. PLAINTIFF does not know the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

4. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitiously named defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. PLAINTIFF will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

5. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining co-defendant, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment. PLAINTIFF is further informed and believes that each co-defendant, by and through its officers, directors or managing agents ratified, authorized and approved, expressly or implicitly, all of the conduct alleged herein.

6. When in this Complaint reference is made to any act of the "DEFENDANT," such shall be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants named in this lawsuit committed or authorized such acts, or failed and omitted to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of the Defendants and did so while acting within the scope of their employment or agency.

7. When in this Complaint reference is made to any act by a "DEFENDANT" or "Defendants" or "co-defendants," such allegations and reference shall also be deemed to mean the acts and failures to act of each of the named Defendants acting individually, jointly and severally.

JURISDICTION AND VENUE

8. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

9. This Court has jurisdiction over all causes of action asserted herein pursuant to California Constitution, Article VI, Sec. 10, because this case is a cause not given by statute to other trial courts.

10. This Court has jurisdiction over DEFENDANT because each co-defendant is a corporation, limited liability company or other business entity authorized to do business in the State of California and registered with the California Secretary of State to do sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avail itself of the California market through the ownership and operation of recruiting and staffing offices throughout the State of California, to render the exercise of jurisdiction by the California courts consistent with traditional notions of fair play and substantial justice.

11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. DEFENDANT'S actionable and unlawful employment practices as to PLAINTIFF occurred in the County of San Diego, State of California.

12. The Class Action Fairness Act [28 U.S.C.S. § 1332(d)] ("CAFA") does not apply to the present class action Complaint. The present Complaint is brought solely on behalf of DEFENDANT'S *California-based* employees. As a result, PLAINTIFF is informed and believes, and thereon alleges, that under subsection (d)(4) of CAFA, a federal district court "shall decline to exercise jurisdiction" of the present matter due to the following: greater than two-thirds of the members of all proposed plaintiff class in the aggregate are citizens of the State of California; and all Defendants are Defendants from whom significant relief is sought by members of the plaintiff class, whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class, and who are citizens of the State of California; and the principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State of California; and two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State of California.

STATUTORY AND REGULATORY BACKGROUND

A. California Labor Code Sections 201 through 203

13. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

B. California Labor Code Sections 218, 218.5 & 218.6

14. Labor Code Section 218 provides a private right of action for employees to sue directly for any wages or penalty due to him/her under this article of the Labor Code. Labor Code Sections 218.5 and 218.6 provide for the recovery of attorneys' fees, costs and pre-judgment interest to the prevailing party in the event of an action to recover wages brought by private individuals.

C. California Labor Code Section 221

15. Labor Code Section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by unauthorized deductions of employees' wages or recovery after payment of the wage. In referring to "wages" paid, Section 221 prohibits an employer from collecting or receiving wages "that have already been earned by performance of agreed-upon requirements." (*Steinhebel v. Los Angeles Times Communications*, (2005) 126 Cal.App.4th 696, 707.)

D. California Labor Code Section 226

16. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, the precise, actual number of hours and minutes worked by a non-exempt employee must be accurately itemized on each pay statement. If an employer knowingly and intentionally fails to comply with this section, it is liable for the greater of all actual

damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000 per employee.

E. California Labor Code Section 226.7

17. Labor Code Section 226.7 provides that no employer shall require any non-exempt employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. This section also provides that if an employer fails to provide a non-exempt employee a 30 minute meal period and/or 10 minute rest periods in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided and one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period is not provided.

F. California Labor Code Section 510

18. Labor Code Section 510 requires the payment of overtime to nonexempt employees at the rate of 1 ½ times their regular rate of pay for all hours worked in excess of eight (8) hours per day and all hours worked in excess of forty (40) hours per workweek, and payment of overtime to nonexempt employees at the rate of two times the regular rate of pay for all hours in excess of twelve (12) hours per day and all hours worked excess of eight hours on the seventh day worked in any work week.

G. California Labor Code Section 512

19. Labor Code Section 512 provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be

waived by mutual consent of the employer and the employee only if the first meal period was not waived.

H. Industrial Wage Order 4-2001 (Title 8, California Code of Regulations, § 11040)

20. Industrial Wage Order 4-2001 (and its predecessors), governing "Professional, Technical, Clerical, Mechanical and Similar Occupations," is the applicable wage order in this action. Industrial Wage Order 4-2001, which has been enacted into California's regulatory law as Title 8, California Code of Regulations, § 11040, provides that employers must keep accurate time records showing when employees begin and end each meal period [subsection (7)(A)(3)]. In addition, the wage order provides that every employer shall permit all employees to take rest periods in the middle of each work period. The authorized rest period is to be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. [subsection (12)(A)]. The regulation also defines an "employer" as "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

I. California Business & Professions Code Section 17200 et seq.

21. California Business & Professions Code § 17200 defines unfair competition to include "unlawful, unfair or fraudulent business practices."

22. California Business & Professions Code § 17203 provides that "[t]he court may make such orders or judgments...as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore any person in interest any money or property, real or personal, which may have been acquired by means of unfair competition."

23. California Business & Professions Code § 17204 provides for suits for injunctive relief, restitution and disgorgement of profits.

CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Eighth Causes of Action of this suit as a class action pursuant to California Code of Civil Procedure § 382, on behalf of all individuals employed by DEFENDANT in the State of California in hourly, non-exempt positions during the relevant time period. This action is also brought for the benefit of the general public.

25. The putative classes PLAINTIFF will seek to certify are currently composed of and defined as follows:

a. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who were employed by SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2003 and the present (hereinafter, "the CLASS").**

b. **All former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who separated their employment with SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2004 and the present (hereinafter, "the SUBCLASS.")**

26. Numerosity: The potential quantity of members of the CLASS and SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and unpractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASS and SUBCLASS is currently unknown to PLAINTIFF; however, it is estimated that there are at least 50,000 members in the CLASS and at least 10,000 members in the SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of DEFENDANT'S records.

27. Typicality: The claims of PLAINTIFF are typical of the claims of all members of the CLASS and SUBCLASS mentioned herein because all members of the CLASS and SUBCLASS sustained injuries and damages arising out of DEFENDANT'S common course of

conduct in violation of California wage and hour law, and the injuries and damages of all members of the CLASS and SUBCLASS were caused by DEFENDANT'S wrongful conduct in violation of California statutory and regulatory law, as alleged herein.

28. Adequacy: PLAINTIFF is an adequate representative of the CLASS and SUBCLASS and will fairly protect the interests of the members of the CLASS and SUBCLASS, and has no interests antagonistic to the members of the CLASS and SUBCLASS, and will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

29. Superiority. The nature of this action and the nature of the laws available to PLAINTIFF make the use of the class action format a particularly effective and appropriate procedure to afford relief to PLAINTIFF for the wrongs alleged herein:

a. This case involves large corporate Defendants and a large number of individual class members with common issues of law and fact. According to DEFENDANT'S website, www.spherion.com, DEFENDANT employs "[a]pproximately 300,000" employees "making Spherion one of the top employers in North America;"

b. If each individual member of the CLASS and SUBCLASS were required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because DEFENDANT would be able to exploit and overwhelm the limited resources of each member of the CLASS and SUBCLASS with DEFENDANT'S vastly superior financial and legal resources.

c. Requiring each individual member of the CLASS and SUBCLASS to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the CLASS and SUBCLASS who would be disinclined to pursue an action against DEFENDANT because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well being;

d. Proof of a common business practice or factual pattern, of which the members of the CLASS and SUBCLASS experienced, is representative of the CLASS and SUBCLASS herein and will establish the right of each of the members of CLASS and SUBCLASS to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the CLASS and SUBCLASS, even if possible, would create a substantial risk of inconsistent and varying verdicts or adjudications with respect to the individual members of the CLASS and SUBCLASS against DEFENDANT, which would establish potentially incompatible standards of conduct for DEFENDANT and/or legal determinations with respect to individual members of the CLASS and SUBCLASS.

30. Existence and Predominance of Common Questions of Fact and Law:

There are common questions of fact and law as to the members of the CLASS and SUBCLASS, which predominate over questions affecting only individual members of the CLASS and SUBCLASS including, without limitation:

a. Whether the members of the CLASS were subjected to unauthorized and illegal deduction of their earned wages;

b. Whether the members of the CLASS were expected, required, permitted and/or suffered to work overtime hours on a regular basis;

c. Whether the members of the CLASS were paid overtime compensation in accordance with California statutory and regulatory law;

d. Whether the members of the CLASS were provided with 30-minute meal breaks;

e. Whether DEFENDANT has failed to keep accurate time records showing when members of the CLASS begin and end each meal break;

f. Whether the members of the CLASS were provided with 10-minute rest periods;

g. Whether the members of the SUBCLASS received all compensation owed and due at the time of their separation of employment;

h. Whether the members of the SUBCLASS are entitled to seek recovery of penalties pursuant to Labor Code § 203;

i. Whether DEFEDANT properly itemized the wage statements of the members of the CLASS;

j. Whether DEFENDANT'S conduct constituted unfair or unlawful business practices within the meaning of Business & Professions Code § 17200 *et seq.*;

k. Whether the members of the CLASS and SUBCLASS are entitled to compensatory damages, and if so, the means of measuring such damages;

l. Whether the members of the CLASS and SUBCLASS are entitled to injunctive relief;

m. Whether the members of the CLASS and SUBCLASS are entitled to restitution;

n. Whether the members of the CLASS and SUBCLASS are entitled to disgorgement of profits;

o. Whether DEFENDANT is liable for pre-judgment interest; and

p. Whether DEFENDANT is liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION
(Unlawful Deductions of Wages Earned in Violation of
California Labor Code Sections 204 & 221)

(On Behalf of the CLASS)

31. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

32. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of deducting, collecting and/or receiving wages earned by members of the and CLASS. As a result, members of the CLASS have not been paid all wages earned in performing work for DEFENDANT.

33. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT was not authorized, required nor empowered to deduct, collect and/or receive wages from the members of the CLASS pursuant to state or federal law, nor express authorization of the members of the and CLASS, in writing, to cover insurance premiums, hospital or medical dues, nor pursuant to an enforceable and lawful wage agreement or statute.

34. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT'S regular practice of deducting, collecting and/or receiving wages earned by the members of the CLASS violates California Labor Code sections 204 and 221.

35. As a result of the actions of DEFENDANT, in deducting, collecting and/or receiving wages earned by the members of the CLASS, members of the CLASS were damaged by not receiving wages that they should have received. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid wages, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code sections 218, 218.5 & 218.6.

SECOND CAUSE OF ACTION

(Failure to Pay Overtime Compensation in Violation of California Labor Code Sections 510 & 1194)

(On Behalf of the CLASS)

36. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

37. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of requiring, suffering or permitting members of the CLASS to work hours in excess of eight hours per day and/or 40 hours per week.

38. The laws of the State of California require employers, such as DEFENDANT, to pay overtime compensation to all non-exempt employees. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are not exempt from overtime pay requirements under California law. PLAINTIFF further alleges that all members of the CLASS have been classified by DEFENDANT as non-exempt, hourly employees.

39. As a result of the actions of DEFENDANT in failing and/or refusing to pay overtime compensation, members of the CLASS were damaged by not receiving overtime compensation which they should have received, but did not receive. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid overtime, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION

(Failure to Provide 30-Minute Employee Meal Period)

(On Behalf of the CLASS)

40. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

41. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than five hours in a day without being provided with a thirty-minute meal period during which members of the CLASS

were relieved of all of their respective work duties. DEFENDANT also promulgated and enforced policies under which members of the and CLASS regularly worked more than ten hours in a day without being provided with a second thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties.

42. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times, DEFENDANT has failed to maintain accurate records of when members of the CLASS begin and end each meal period.

43. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each work shift lasting more than five hours during which members of the CLASS were not provided with one or more thirty minute meal periods.

44. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION

(Failure to Allow 10-Minute Employee Rest Periods)

(On Behalf of the CLASS)

45. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

46. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than four hours per day without being allowed one or more paid rest periods of at least ten minutes during which the members of the CLASS were relieved of all of their respective work duties.

47. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period during which members of the CLASS were not provided with one or more ten minute rest periods.

48. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FIFTH CAUSE OF ACTION

(Failure to Reimburse for Reasonable Business Expenses in Violation of Labor Code § 2802; Cal. Code Regs., Title 8 § 11040 sections 8 & 9)

(On Behalf of the CLASS)

49. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

50. Labor Code Section 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Title 8 CCR § 11010(8) provides that "No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is cause by a dishonest or willful act, or by the gross negligence of the employee."

51. During the applicable statutory period, PLAINTIFF and the members of the CLASS incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of DEFENDANT, including but not limited to travel expenses, gas charges, mileage, cell phone charges, laptop computer usage, and other similar expenditures.

52. PLAINTIFF is informed and believes that pursuant to California Labor Code § 2802 and Title 8 CCR § 11040(8) & (9), PLAINTIFF and the members of the CLASS are entitled to recover their un-reimbursed expenditures and losses, interest thereon and attorneys' fees and costs, in amounts to be proven at trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Properly Itemized Wage Statements in Violation of Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

(On Behalf of the CLASS)

53. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

54. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, gross wages earned, the precise, actual number of hours and minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the pay period, the name of the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period must be accurately itemized on each pay statement. Furthermore, the deductions made from payment of wages must be recorded, properly dated, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

55. During the applicable statutory period, DEFENDANT has routinely failed to provide the members of the CLASS, at the time of each payment of wages, an itemized statement in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. DEFENDANT'S failure to provide itemized statements to the members of the CLASS has been knowing and intentional and was in clear violation of Labor Code § 226(a). In direct violation of California law, DEFENDANT has refused to provide the members of the CLASS with any record or documentation of expenses deducted from such employees' earnings.

56. The members of the CLASS have suffered injuries as a result of the knowing and intentional failure of DEFENDANT to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that DEFENDANT'S failure to provide Class Members with an itemized wage statement made it impossible for the members of the CLASS to be aware that unlawful deductions were being made from their earnings, that they were not being paid all wages earned, and that in

certain instances their wages fell below the statutory hourly minimum wage and overtime wage rates.

57. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT'S knowing and intentional failure to furnish the members of the CLASS with itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code § 226(e) entitles PLAINTIFF and the members of the CLASS to recover the greater of their actual damages caused by DEFENDANT'S violations, or $50 per employee for the initial pay period in which the violation occurred, and $100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of $4,000 per employee.

SEVENTH CAUSE OF ACTION
(Failure to Pay Compensation at the Time of Termination in Violation of California Labor Code Sections 201-203)

(On Behalf of the SUBCLASS)

58. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

59. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT has willfully failed and have refused to pay all compensation and wages due to members of the members of the SUBCLASS upon their separation of employment.

60. DEFENDANT'S failure to timely pay compensation and wages to members of the members of the SUBCLASS at the time of their separation of employment is willful. As a result, DEFENDANT is liable to members of the members of the SUBCLASS for waiting time penalties under California Labor Code Section 203 in an amount to be ascertained at trial.

EIGHTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)

(On behalf of PLAINTIFF, the CLASS, and the General Public)

61. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

62. Within each of the four years prior to the commencement of this action, PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT has unlawfully failed to pay hourly wages and overtime wages to Class Members, including Plaintiff, in violation of Labor Code §§ 204, 221 510, 1194, 1197 and 1197.1; unlawfully failed to provide meal breaks, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code §§ 226.7 and 512; unlawfully failed to provide rest periods, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code § 226.7; unlawfully failed to reimburse Class Members, including PLAINTIFF, for reasonable business expenditures in violation of Labor Code § 2802; and unlawfully failed to provide properly itemized wage statements to Class Members, including PLAINTIFF, in violation of Labor Code § 226.

63. By committing the alleged acts and/or omissions as described in this Complaint, DEFENDANT has engaged, and continue to engage, in unlawful and/or unfair business practices within the meaning of California Business & Professions Code § 17200 *et seq.*

64. PLAINTIFF alleges, on the basis of information and belief, that as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint, DEFENDANT has unlawfully earned profits from such unlawful and/or unfair business practices.

65. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.* Thus, on behalf of members of the CLASS, and on behalf of the general public, PLAINTIFF seeks injunctive relief, restitution (to members of the CLASS) of all unlawfully withheld funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained by DEFENDANT as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint.

66. PLAINTIFF is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, DEFENDANT will continue to engage in the alleged acts and/or omissions as described in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself, all others similarly situated, and on behalf of the general public, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and SUBCLASS, appointing the named PLAINTIFF as representative of all others similarly situated and appointing the law firm(s) representing the named PLAINTIFF as counsel for members of the CLASS;

As to the First Cause of Action for Unlawfully Deducted Wages on Behalf of the CLASS

2. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S unlawful deduction of wages earned by members of the CLASS;

3. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

4. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

5. For such other and further relief as the court deems just and proper;

As to the Second Cause of Action for Overtime Compensation on Behalf of the CLASS

6. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S failure to pay overtime compensation to members of the CLASS;

7. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 1194;

8. For attorneys' fees and costs pursuant to Labor Code Section 1194, or as otherwise permitted by statute;

9. For such other and further relief as the court deems just and proper;

As to the Third Cause of Action for Failure to Allow 30-Minute Employee Meal Periods on Behalf of the CLASS

10. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each work shift in which such member worked more than five hours without being permitted to take the required meal period;

11. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

12. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

13. For such other and further relief as the court deems just and proper;

As to the Fourth Cause of Action for Failure to Allow 10-Minute Employee Rest Periods on Behalf of the CLASS

14. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each four hour work period in which such member worked without being permitted to a paid rest period;

15. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

16. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

17. For such other and further relief as the court deems just and proper;

As to the Fifth Cause of Action for Indemnification of Employees for Expenditures or Losses in Discharge of Duties or Obedience to Directions on Behalf of the CLASS

18. For compensatory damages according to proof, including but not limited to expenditures, losses, lost wages, earnings and other employee benefits and all other sums of money owed to each member of the CLASS incurred during the proper discharge of their duties for DEFENDANT, or during the course and scope of their employment for DEFENDANT.

19. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289;

20. For attorneys' fees and costs pursuant to Labor Code § 2802 or as otherwise permitted by statute;

21. For such other and further relief as the court deems just and proper;

As to the Sixth Cause of Action for Improperly Itemized Wage Statements on Behalf of the CLASS

22. For compensatory damages or minimum statutory damages of $50 for the first violation and $100 for each subsequent violation pursuant to Labor Code Section 226(e);

23. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 226(e);

24. For attorneys' fees and costs pursuant to Labor Code Section 226(e) or as otherwise permitted by statute;

25 For such other and further relief as the court deems just and proper;

As to the Seventh Cause of Action for Waiting Time Penalties on Behalf of the SUBCLASS

26. For statutory penalties pursuant to Labor Code Section 203;

27. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

28. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

29. For such other and further relief as the court deems just and proper;

As to the Eighth Cause of Action for Unlawful and Unfair Business Practices on Behalf of the CLASS and the General Public

30. For an Order requiring DEFENDANT to identify each of the members of the CLASS by name, home address and home telephone number;

31. For an Order compelling DEFENDANT to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS who have suffered as a result of DEFENDANT'S unlawful and unfair business practices alleged herein;

32. For an order compelling DEFENDANT to disgorge and pay over to each of the members of the CLASS all profits and savings resulting from DEFENDANT'S unlawful and unfair business practices alleged herein;

33. For issuance of a permanent injunction enjoining DEFENDANT from continuing to engage in the unlawful and unfair business practices alleged herein;

34. For interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 204.6;

35. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 1194 & 2802, Code of Civil Procedure Section 1021.5 and as otherwise permitted by statute;

36. For such other and further relief as the court deems just and proper;

DATED: September 25, 2007

EMGE & ASSOCIATES

Derek J. Emge, Esq.
550 West "C" St., Suite 1600
San Diego, CA 92101
Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, on behalf of all others similarly situated, and on behalf of the general public.

SUMMONS
(CITACION JUDICIAL)

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and Does 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
San Diego Superior Court
330 West Broadway
San Diego, CA 92101

CASE NUMBER: *(Número del Caso)*: 37-2007-00075612-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Derek J. Emge SBN 161105 (619) 595-1400 (619) 595-1480
Emge & Associates
550 West C Street, Suite 1600

DATE: SEP 25 2007 *(Fecha)*
Clerk, by *(Secretario)* S. LITTLE, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Legal Solutions Plus

Code of Civil Procedure §§ 412.20, 465

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Derek J. Emge SBN 161105
Emge & Associates
550 West C Street, Suite 1600
San Diego, CA 92101

TELEPHONE NO.: (619) 595-1400 FAX NO.: (619) 595-1480
ATTORNEY FOR (Name): Plaintiff Philip J. Martinet

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego
STREET ADDRESS:
MAILING ADDRESS: 330 West Broadway
CITY AND ZIP CODE: San Diego, CA 92101
BRANCH NAME:

CASE NAME: Martinet v. Spherion

CIVIL CASE COVER SHEET
x **Unlimited** (Amount demanded exceeds $25,000) **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation
Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 37-2007-00075612-CU-OE-CTL
JUDGE:
DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
Auto (22)
Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
Asbestos (04)
Product liability (24)
Medical malpractice (45)
Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
Business tort/unfair business practice (07)
Civil rights (08)
Defamation (13)
Fraud (16)
Intellectual property (19)
Professional negligence (25)
Other non-PI/PD/WD tort (35)

Employment
Wrongful termination (36)
x Other employment (15)

Contract
Breach of contract/warranty (06)
Rule 3.740 collections (09)
Other collections (09)
Insurance coverage (18)
Other contract (37)

Real Property
Eminent domain/Inverse condemnation (14)
Wrongful eviction (33)
Other real property (26)

Unlawful Detainer
Commercial (31)
Residential (32)
Drugs (38)

Judicial Review
Asset forfeiture (05)
Petition re: arbitration award (11)
Writ of mandate (02)
Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
Antitrust/Trade regulation (03)
Construction defect (10)
Mass tort (40)
Securities litigation (28)
Environmental/Toxic tort (30)
Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
Enforcement of judgment (20)

Miscellaneous Civil Complaint
RICO (27)
Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
Partnership and corporate governance (21)
Other petition *(not specified above)* (43)

2. This case [ ] is [x] is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
a. Large number of separately represented parties
b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. Substantial amount of documentary evidence
d. Large number of witnesses
e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*:
a. x monetary b. [x] nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action *(specify)*: 8: Labor code 204, 221, 510, 1194, 226.3, 226.7, 2802
5. This case [x] is [ ] is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

Date: September 25, 2007
Derek J. Emge
(TYPE OR PRINT NAME)
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers.
If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases.
In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)-Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/ Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/ Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
  - Medical Malpractice-Physicians & Surgeons
  - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
  - Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
  - Negligent Breach of Contract/ Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
  - Confession of Judgment (*non-domestic relations*)
  - Sister State Judgment
  - Administrative Agency Award (*not unpaid taxes*)
  - Petition/Certification of Entry of Judgment on Unpaid Taxes
  - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint (*not specified above*) (42)
  - Declaratory Relief Only
  - Injunctive Relief Only (*non-harassment*)
  - Mechanics Lien
  - Other Commercial Complaint Case (*non-tort/non-complex*)
  - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

Exhibit B

Derek J. Emge (CSB No. 161105)
EMGE & ASSOCIATES
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San Diego, CA 92101
Telephone (619) 595-1400
Facsimile (619) 595-1480

David A. Huch (CSB No. 222892)
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7040 Avenida Encinas, Suite 104
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Telephone (760) 402-9528
Facsimile (760) 683-3245

Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	**CIVIL NO. 07-CV-02178 W (AJB)** **CLASS ACTION** **FIRST AMENDED COMPLAINT FOR COMPENSATORY DAMAGES, INJUNCTIVE RELIEF, DISGORGEMENT OF PROFITS & CIVIL PENALTIES** **1. Unlawful Deductions of Earned Wages In Violation of Labor Code §§ 204 & 221;** **2. Failure to Pay Overtime In Violation of Labor Code §§ 510 & 1194;** **3. Failure to Provide Meal Breaks, Or Compensation in Lieu Thereof (Labor Code §§ 226.7, 512; Cal. Code Regs., Title 8 § 11040);** **4. Failure to Provide Rest Periods, Or Compensation in Lieu Thereof (Labor Code § 226.7; Cal. Code Regs., Title 8 § 11040);**

5. Failure to Reimburse for Reasonable Business Expenses (Labor Code § 2802);
6. Failure to Provide Properly Itemized Wage Statements (Labor Code § 226, 226.3);
7. Failure to Pay Compensation at Time of Termination In Violation of Labor Code §§ 201-203;
8. Unlawful and Unfair Business Practices (Business & Professions Code § 17200 *et seq.*);
9. Labor Code Private Attorney General Act of 2004 (Labor Code § 2698 *et seq.*)

JURY TRIAL DEMANDED

Plaintiff, PHILIP J. MARTINET, on behalf of himself, all others similarly situated, and on behalf of the general public, alleges causes of action against defendants, and each of them, as follows:

GENERAL ALLEGATIONS AND IDENTIFICATION OF THE PARTIES

1. Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), is a competent adult who resides in the City of San Diego, County of San Diego, State of California. From his date of hire, at or around July 1, 2007 to until his date of separation of employment at or around August 18, 2007, PLAINTIFF was employed as a non-exempt, hourly employee by Defendant SPHERION ATLANTIC ENTERPRISES LLC in the County of San Diego, State of California.

2. PLAINTIFF is informed and believes that Defendant SPHERION ATLANTIC ENTERPRISES LLC is a Delaware limited liability company with its principal place of business in Fort Lauderdale, Florida. At all times mentioned herein, Defendant SPHERION ATLANTIC ENTERPRISES LLC was doing business in the State of California through its ownership and operation of numerous recruiting and staffing offices throughout California, as well as recruiting and employing thousands of California employees. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, SPHERION ATLANTIC ENTERPRISES LLC

employed PLAINITFF and exercised control over PLAINTIFF's wages, hours and working conditions.

3. PLAINTIFF does not know the true names and capacities of Defendants sued herein as DOES 1 through 50, inclusive, and will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

4. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitiously named defendants was in some manner legally responsible for the actionable and unlawful actions, policies and practices as alleged herein. PLAINTIFF will amend this Complaint to set forth the true names and capacities of said defendants, along with the appropriate charging allegations when the same have been ascertained.

5. PLAINTIFF is informed and believes, and thereon alleges, that at all times mentioned herein, all Defendants, and each of them, were acting as the agent and/or employee of each remaining co-defendant, and were acting with permission and consent of each other, and within the course and scope of said agency and/or employment. PLAINTIFF is further informed and believes that each co-defendant, by and through its officers, directors or managing agents ratified, authorized and approved, expressly or implicitly, all of the conduct alleged herein.

6. When in this Complaint reference is made to any act of the "DEFENDANT," such shall be deemed to mean that officers, directors, agents, employees, or representatives of the Defendants named in this lawsuit committed or authorized such acts, or failed and omitted to adequately supervise or properly control or direct their employees while engaged in the management, direction, operation or control of the affairs of the Defendants and did so while acting within the scope of their employment or agency.

7. When in this Complaint reference is made to any act by a "DEFENDANT" or "Defendants" or "co-defendants," such allegations and reference shall also be deemed to mean the acts and failures to act of each of the named Defendants acting individually, jointly and severally.

JURISDICTION AND VENUE

8. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

9. This Court has jurisdiction over all causes of action asserted herein pursuant to 28 U.S.C.S. § 1332(d).

10. Venue as to each Defendant is proper in this judicial district. DEFENDANT'S actionable and unlawful employment practices as to PLAINTIFF occurred in the County of San Diego, State of California.

STATUTORY AND REGULATORY BACKGROUND

A. California Labor Code Sections 201 through 203

11. California Labor Code Section 201 requires an employer who discharges an employee to pay compensation due and owing said employee immediately upon discharge. California Labor Code Section 202 requires an employer to promptly pay compensation due and owing an employee within 72 hours of that employee's separation of employment by resignation. California Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation as required pursuant to California Labor Code Sections 201 and 202, said employer is liable to said employee for waiting time penalties.

B. California Labor Code Sections 218, 218.5 & 218.6

12. Labor Code Section 218 provides a private right of action for employees to sue directly for any wages or penalty due to him/her under this article of the Labor Code. Labor Code Sections 218.5 and 218.6 provide for the recovery of attorneys' fees, costs and pre-judgment interest to the prevailing party in the event of an action to recover wages brought by private individuals.

C. California Labor Code Section 221

13. Labor Code Section 221 prohibits an employer from receiving from an employee any wage paid by the employer to the employee either by unauthorized deductions of employees' wages or recovery after payment of the wage. In referring to "wages" paid, Section 221 prohibits

an employer from collecting or receiving wages "that have already been earned by performance of agreed-upon requirements." (*Steinhebel v. Los Angeles Times Communications*, (2005) 126 Cal.App.4th 696, 707.)

D. California Labor Code Section 226

14. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, the precise, actual number of hours and minutes worked by a non-exempt employee must be accurately itemized on each pay statement. If an employer knowingly and intentionally fails to comply with this section, it is liable for the greater of all actual damages or $50 for the initial pay period in which a violation occurs and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of $4,000 per employee.

E. California Labor Code Section 226.7

15. Labor Code Section 226.7 provides that no employer shall require any non-exempt employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission. This section also provides that if an employer fails to provide a non-exempt employee a 30 minute meal period and/or 10 minute rest periods in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided and one additional hour of pay at the employee's regular rate of compensation for each work day that a rest period is not provided.

F. California Labor Code Section 510

16. Labor Code Section 510 requires the payment of overtime to nonexempt employees at the rate of 1 ½ times their regular rate of pay for all hours worked in excess of eight (8) hours per day and all hours worked in excess of forty (40) hours per workweek, and payment of overtime to nonexempt employees at the rate of two times the regular rate of pay for all hours in excess of twelve (12) hours per day and all hours worked excess of eight hours on the seventh day worked in any work week.

G. California Labor Code Section 512

17. Labor Code Section 512 provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

H. California Labor Code Section 2698 *et seq.*

18. Labor Code Sections 2698 and 2699 are known as the "Labor Code Private Attorney General Act of 2004." Labor Code Section 2699 allows for the recovery of civil penalties for *any* violation of the Labor Code through a civil action brought by an aggrieved employee. "An aggrieved employee" is defined in Labor Code Section 2699 as "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

19. Labor Code Section 2699 provides that an aggrieved employee may recover civil penalties in a civil action filed on behalf of himself or herself and other current or former employees against whom *one or more* of the alleged violations were committed. Labor Code Section 2699 also provides that "nothing in this section shall operate to limit an employee's right to pursue other remedies available under state or federal law, either separately or concurrently with an action taken under this section."

I. Industrial Wage Order 4-2001 (Title 8, California Code of Regulations, § 11040)

20. Industrial Wage Order 4-2001 (and its predecessors), governing "Professional, Technical, Clerical, Mechanical and Similar Occupations," is the applicable wage order in this action. Industrial Wage Order 4-2001, which has been enacted into California's regulatory law as

Title 8, California Code of Regulations, § 11040, provides that employers must keep accurate time records showing when employees begin and end each meal period [subsection (7)(A)(3)]. In addition, the wage order provides that every employer shall permit all employees to take rest periods in the middle of each work period. The authorized rest period is to be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. [subsection (12)(A)]. The regulation also defines an "employer" as "any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person."

J. California Business & Professions Code Section 17200 et seq.

21. California Business & Professions Code § 17200 defines unfair competition to include "unlawful, unfair or fraudulent business practices."

22. California Business & Professions Code § 17203 provides that "[t]he court may make such orders or judgments…as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore any person in interest any money or property, real or personal, which may have been acquired by means of unfair competition."

23. California Business & Professions Code § 17204 provides for suits for injunctive relief, restitution and disgorgement of profits.

CLASS ACTION ALLEGATIONS

24. PLAINTIFF brings the First through Eighth Causes of Action of this suit as a class action pursuant to California Code of Civil Procedure § 382, on behalf of all individuals employed by DEFENDANT in the State of California in hourly, non-exempt positions during the relevant time period. This action is also brought for the benefit of the general public.

25. The putative classes PLAINTIFF will seek to certify are currently composed of and defined as follows:

a. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who were employed by SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2003 and the present (hereinafter, "the CLASS").**

b. **All current and former California-based, hourly, non-exempt employees of Defendant SPHERION ATLANTIC ENTERPRISES LLC who separated their employment with SPHERION ATLANTIC ENTERPRISES LLC between September 25, 2004 and the present (hereinafter, "the SUBCLASS.")**

26. Numerosity: The potential quantity of members of the CLASS and SUBCLASS as defined is so numerous that joinder of all members would be unfeasible and unpractical. The disposition of their claims through this class action will benefit both the parties and this Court. The quantity of members of the CLASS and SUBCLASS is currently unknown to PLAINTIFF; however, it is estimated that there are at least 50,000 members in the CLASS and at least 10,000 members in the SUBCLASS. The quantity and identity of such membership is readily ascertainable via inspection of DEFENDANT'S records.

27. Typicality: The claims of PLAINTIFF are typical of the claims of all members of the CLASS and SUBCLASS mentioned herein because all members of the CLASS and SUBCLASS sustained injuries and damages arising out of DEFENDANT'S common course of conduct in violation of California wage and hour law, and the injuries and damages of all members of the CLASS and SUBCLASS were caused by DEFENDANT'S wrongful conduct in violation of California statutory and regulatory law, as alleged herein.

28. Adequacy: PLAINTIFF is an adequate representative of the CLASS and SUBCLASS and will fairly protect the interests of the members of the CLASS and SUBCLASS, and has no interests antagonistic to the members of the CLASS and SUBCLASS, and will

vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

29. Superiority. The nature of this action and the nature of the laws available to PLAINTIFF make the use of the class action format a particularly effective and appropriate procedure to afford relief to PLAINTIFF for the wrongs alleged herein:

a. This case involves large corporate Defendants and a large number of individual class members with common issues of law and fact. According to DEFENDANT'S website, www.spherion.com, DEFENDANT employs "[a]pproximately 300,000" employees "making Spherion one of the top employers in North America;"

b. If each individual member of the CLASS and SUBCLASS were required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because DEFENDANT would be able to exploit and overwhelm the limited resources of each member of the CLASS and SUBCLASS with DEFENDANT'S vastly superior financial and legal resources.

c. Requiring each individual member of the CLASS and SUBCLASS to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the CLASS and SUBCLASS who would be disinclined to pursue an action against DEFENDANT because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well being;

d. Proof of a common business practice or factual pattern, of which the members of the CLASS and SUBCLASS experienced, is representative of the CLASS and SUBCLASS herein and will establish the right of each of the members of CLASS and SUBCLASS to recover on the causes of action alleged herein;

e. The prosecution of separate actions by the individual members of the CLASS and SUBCLASS, even if possible, would create a substantial risk of inconsistent and varying verdicts or adjudications with respect to the individual members of the CLASS and SUBCLASS against DEFENDANT, which would establish potentially incompatible standards of conduct for DEFENDANT and/or legal determinations with respect to individual members of the CLASS and SUBCLASS.

30. Existence and Predominance of Common Questions of Fact and Law:

There are common questions of fact and law as to the members of the CLASS and SUBCLASS, which predominate over questions affecting only individual members of the CLASS and SUBCLASS including, without limitation:

a. Whether the members of the CLASS were subjected to unauthorized and illegal deduction of their earned wages;

b. Whether the members of the CLASS were expected, required, permitted and/or suffered to work overtime hours on a regular basis;

c. Whether the members of the CLASS were paid overtime compensation in accordance with California statutory and regulatory law;

d. Whether the members of the CLASS were provided with 30-minute meal breaks;

e. Whether DEFENDANT has failed to keep accurate time records showing when members of the CLASS begin and end each meal break;

f. Whether the members of the CLASS were provided with 10-minute rest periods;

g. Whether the members of the SUBCLASS received all compensation owed and due at the time of their separation of employment;

h. Whether the members of the SUBCLASS are entitled to seek recovery of penalties pursuant to Labor Code § 203;

i. Whether DEFEDANT properly itemized the wage statements of the members of the CLASS;

j. Whether DEFENDANT'S conduct constituted unfair or unlawful business practices within the meaning of Business & Professions Code § 17200 *et seq.*;

k. Whether the members of the CLASS and SUBCLASS are entitled to compensatory damages, and if so, the means of measuring such damages;

l. Whether the members of the CLASS and SUBCLASS are entitled to injunctive relief;

m. Whether the members of the CLASS and SUBCLASS are entitled to restitution;

n. Whether the members of the CLASS and SUBCLASS are entitled to disgorgement of profits;

o. Whether DEFENDANT is liable for pre-judgment interest; and

p. Whether DEFENDANT is liable for attorneys' fees and costs.

FIRST CAUSE OF ACTION
(Unlawful Deductions of Wages Earned in Violation of California Labor Code Sections 204 & 221)

(On Behalf of the CLASS)

31. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

32. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of deducting, collecting and/or receiving wages earned by members of the and CLASS. As a result, members of the CLASS have not been paid all wages earned in performing work for DEFENDANT.

33. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT was not authorized, required nor empowered to deduct, collect and/or receive wages from the members of the CLASS pursuant to state or federal law, nor express authorization of the members of the and

CLASS, in writing, to cover insurance premiums, hospital or medical dues, nor pursuant to an enforceable and lawful wage agreement or statute.

34. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT'S regular practice of deducting, collecting and/or receiving wages earned by the members of the CLASS violates California Labor Code sections 204 and 221.

35. As a result of the actions of DEFENDANT, in deducting, collecting and/or receiving wages earned by the members of the CLASS, members of the CLASS were damaged by not receiving wages that they should have received. Members of the CLASS are therefore entitled to compensation in an amount to be proven at trial for unpaid wages, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code sections 218, 218.5 & 218.6.

SECOND CAUSE OF ACTION
(Failure to Pay Overtime Compensation in Violation of California Labor Code Sections 510 & 1194)

(On Behalf of the CLASS)

36. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

37. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times DEFENDANT has continuously engaged in the regular practice of requiring, suffering or permitting members of the CLASS to work hours in excess of eight hours per day and/or 40 hours per week.

38. The laws of the State of California require employers, such as DEFENDANT, to pay overtime compensation to all non-exempt employees. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are not exempt from overtime pay requirements under California law. PLAINTIFF further alleges that all members of the CLASS have been classified by DEFENDANT as non-exempt, hourly employees.

39. As a result of the actions of DEFENDANT in failing and/or refusing to pay overtime compensation, members of the CLASS were damaged by not receiving overtime compensation which they should have received, but did not receive. Members of the CLASS are

therefore entitled to compensation in an amount to be proven at trial for unpaid overtime, pre-judgment interest, attorneys' fees and costs pursuant to Labor Code section 1194.

THIRD CAUSE OF ACTION

(Failure to Provide 30-Minute Employee Meal Period)

(On Behalf of the CLASS)

40. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

41. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than five hours in a day without being provided with a thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties. DEFENDANT also promulgated and enforced policies under which members of the and CLASS regularly worked more than ten hours in a day without being provided with a second thirty-minute meal period during which members of the CLASS were relieved of all of their respective work duties.

42. PLAINTIFF alleges, on the basis of information and belief, that at all relevant times, DEFENDANT has failed to maintain accurate records of when members of the CLASS begin and end each meal period.

43. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each work shift lasting more than five hours during which members of the CLASS were not provided with one or more thirty minute meal periods.

44. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FOURTH CAUSE OF ACTION
(Failure to Allow 10-Minute Employee Rest Periods)

(On Behalf of the CLASS)

45. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

46. PLAINTIFF alleges, on the basis of information and belief, that within each of the four years prior to the commencement of this action, DEFENDANT promulgated and enforced policies under which members of the CLASS regularly worked more than four hours per day without being allowed one or more paid rest periods of at least ten minutes during which the members of the CLASS were relieved of all of their respective work duties.

47. PLAINTIFF alleges, on the basis of information and belief, that members of the CLASS are entitled to additional wages pursuant to California Labor Code Section 226.7 for each four hour work period during which members of the CLASS were not provided with one or more ten minute rest periods.

48. As a result of DEFENDANT'S conduct as alleged herein, members of the CLASS have suffered harm and monetary damages, in an amount to be ascertained at trial.

FIFTH CAUSE OF ACTION
(Failure to Reimburse for Reasonable Business Expenses in Violation of Labor Code § 2802; Cal. Code Regs., Title 8 § 11040 sections 8 & 9)

(On Behalf of the CLASS)

49. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

50. Labor Code Section 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer. Title 8 CCR § 11010(8) provides that "No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of

equipment, unless it can be shown that the shortage, breakage, or loss is cause by a dishonest or willful act, or by the gross negligence of the employee."

51. During the applicable statutory period, PLAINTIFF and the members of the CLASS incurred necessary expenditures and losses in direct consequence of the discharge of their employment duties and their obedience to the directions of DEFENDANT, including but not limited to travel expenses, gas charges, mileage, cell phone charges, laptop computer usage, and other similar expenditures.

52. PLAINTIFF is informed and believes that pursuant to California Labor Code § 2802 and Title 8 CCR § 11040(8) & (9), PLAINTIFF and the members of the CLASS are entitled to recover their un-reimbursed expenditures and losses, interest thereon and attorneys' fees and costs, in amounts to be proven at trial.

SIXTH CAUSE OF ACTION

(Failure to Provide Properly Itemized Wage Statements in Violation of Labor Code §§ 226 and 226.3; Cal. Code Regs., Title 8 § 11040 section 7)

(On Behalf of the CLASS)

53. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

54. Labor Code Section 226 requires an employer to keep accurate, itemized pay statements. Under California law, gross wages earned, the precise, actual number of hours and minutes worked by a non-exempt employee, all deductions, net wages earned, inclusive dates of the pay period, the name of the employee, the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period must be accurately itemized on each pay statement. Furthermore, the deductions made from payment of wages must be recorded, properly dated, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

55. During the applicable statutory period, DEFENDANT has routinely failed to provide the members of the CLASS, at the time of each payment of wages, an itemized statement

in writing showing the requirements of Labor Code § 226 and section 7 of Title 8 CCR § 11040. DEFENDANT'S failure to provide itemized statements to the members of the CLASS has been knowing and intentional and was in clear violation of Labor Code § 226(a). In direct violation of California law, DEFENDANT has refused to provide the members of the CLASS with any record or documentation of expenses deducted from such employees' earnings.

56. The members of the CLASS have suffered injuries as a result of the knowing and intentional failure of DEFENDANT to comply with Labor Code § 226(a) and Title 8 CCR § 11040(7), in that DEFENDANT'S failure to provide Class Members with an itemized wage statement made it impossible for the members of the CLASS to be aware that unlawful deductions were being made from their earnings, that they were not being paid all wages earned, and that in certain instances their wages fell below the statutory hourly minimum wage and overtime wage rates.

57. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT'S knowing and intentional failure to furnish the members of the CLASS with itemized wage statements, as alleged above, violated Labor Code § 226(a), as well as Title 8 CCR § 11040(7). Labor Code § 226(e) entitles PLAINTIFF and the members of the CLASS to recover the greater of their actual damages caused by DEFENDANT'S violations, or $50 per employee for the initial pay period in which the violation occurred, and $100 per employee for each violation in subsequent pay periods, not exceeding an aggregate penalty of $4,000 per employee.

SEVENTH CAUSE OF ACTION

(Failure to Pay Compensation at the Time of Termination in Violation of California Labor Code Sections 201-203)

(On Behalf of the SUBCLASS)

58. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

59. PLAINTIFF alleges, on the basis of information and belief, that DEFENDANT has willfully failed and has refused to pay all compensation and wages due to members of the SUBCLASS upon their separation of employment.

60. DEFENDANT'S failure to timely pay compensation and wages to members of the SUBCLASS at the time of their separation of employment is willful. As a result, DEFENDANT is liable to members of the members of the SUBCLASS for waiting time penalties under California Labor Code Section 203 in an amount to be ascertained at trial.

EIGHTH CAUSE OF ACTION

(Unlawful and Unfair Business Practices: Business & Professions Code §§ 17200 *et seq.*)

(On behalf of PLAINTIFF, the CLASS, and the General Public)

61. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

62. Within each of the four years prior to the commencement of this action, PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT has unlawfully failed to pay hourly wages and overtime wages to Class Members, including Plaintiff, in violation of Labor Code §§ 204, 221 510, 1194, 1197 and 1197.1; unlawfully failed to provide meal breaks, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code §§ 226.7 and 512; unlawfully failed to provide rest periods, or compensation in lieu thereof, to Class Members, including PLAINTIFF, in violation of Labor Code § 226.7; unlawfully failed to reimburse Class Members, including PLAINTIFF, for reasonable business expenditures in violation of Labor Code § 2802; and unlawfully failed to provide properly itemized wage statements to Class Members, including PLAINTIFF, in violation of Labor Code § 226.

63. By committing the alleged acts and/or omissions as described in this Complaint, DEFENDANT has engaged, and continue to engage, in unlawful and/or unfair business practices within the meaning of California Business & Professions Code § 17200 *et seq.*

64. PLAINTIFF alleges, on the basis of information and belief, that as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint, DEFENDANT has unlawfully earned profits from such unlawful and/or unfair business practices.

65. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned profits is specifically authorized by California Business & Professions Code § 17200 *et seq.*

Thus, on behalf of members of the CLASS, and on behalf of the general public, PLAINTIFF seeks injunctive relief, restitution (to members of the CLASS) of all unlawfully withheld funds, and the disgorgement of all unlawfully earned profits (to members of the CLASS) obtained by DEFENDANT as a result of DEFENDANT'S alleged acts and/or omissions as described in this Complaint.

66. PLAINTIFF is informed and believes, and thereon alleges, that unless restrained and ordered to pay restitution and disgorge profits derived from said unfair and unlawful business practices, DEFENDANT will continue to engage in the alleged acts and/or omissions as described in this Complaint.

NINTH CAUSE OF ACTION

(Labor Code Private Attorneys General Act of 2004: Labor Code § 2698 *et seq.*)

(On Behalf of PLAINTIFF, All Other Aggrieved Employees and the State of California)

67. PLAINTIFF realleges by reference, as if fully set forth herein, all of the above Paragraphs.

68. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times, DEFENDANT has violated, and continue to violate, several provisions of the California Labor Code, including but not limited to:

i. Sections 201 through 203 (Failure to Pay Compensation at the Time of Separation of Employment);

ii. Section 204 (Failure to Pay Wages Due & Owed);

iii. Section 221 (Unlawful Deductions of Wages Earned);

iv. Section 226 (Failure to Maintain Adequate Wage Statements);

v. Section 226.7 (Failure to Compensate for Missed Meal Break);

vi. Section 226.7 (Failure to Compensate for Missed Rest Periods);

vii. Section 510 (Failure to Pay Overtime);

viii. Section 512 (Failure to Provide Meal Breaks);

ix. Section 1174 (Failure to Maintain Accurate Time Records);

x. Section 1194 (Failure to Pay Overtime Compensation);

xi. Section 2802 (Indemnification of Employees for Work-Related Expenditures).

69. Pursuant to Labor Code Section 2699, PLAINTIFFS bring this cause of action on behalf of themselves and all other current or former employees of DEFENDANT against whom one or more of the alleged violations was committed and/or is being committed ("aggrieved employees," as defined by Section 2699(c)).

70. Pursuant to Labor Code Section 2699, PLANTIFF seeks to recover from DEFENDANT civil penalties for *each* Labor Code violation, to be calculated at the rate at which the civil penalty is to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees.

71. Pursuant to Labor Code Section 2699, for all provisions of the California Labor Code that do not specifically provide for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, PLAINTIFF seeks to recover from Defendants civil penalties for *each* Labor Code violation at the following rate: one hundred dollar ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

72. Pursuant to Labor Code Section 2699, PLAINTIFF seeks an award of reasonable attorney's fees and costs for bringing this cause of action on behalf of themselves and other past and present aggrieved employees of DEFENDANT against whom one or more of the alleged violations was committed.

73. In compliance with Labor Code Section 2699.3, on September 25, 2007 PLAINTIFF provided DEFENDANT and the California Labor & Workforce Development Agency ("LWDA") with written notice, via certified mail, of the specific provisions of the Labor Code alleged to have been violated by Defendants, and the facts and theories to support the allegations.

74. On October 17, 2007 the LWDA notified PLAINTIFF's counsel that it had received PLAINTIFF's notice of the alleged Labor Code violations. The LWDA has designated

PLAINTIFF's Labor Code allegations against DEFENDANT as "LWDA No. 2750."

75. More than 33 days have elapsed since PLAINTIFF notified the LWDA, via certified mail, of the specific provisions of the Labor Code alleged to have been violated by DEFENDANT. To date, the LWDA has not notified PLAINTIFF that it intends to investigate the alleged violations contained in PLAINTIFFS' notice.

76. Pursuant to Section 2699.3(a)(2)(A), PLAINTIFF may commence a civil action against DEFENDANT for civil penalties on behalf of themselves, the State of California and DEFENDANT's other current and former aggrieved employees.

77. Pursuant to Section 2699.3(a)(2)(C), PLAINTIFF may **as a matter of right**, without leave of court, amend the original complaint to bring this cause of action under the Labor Code Private Attorneys General Act of 2004.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, on behalf of himself, all others similarly situated, and on behalf of the general public, prays for judgment as follows:

1. That the Court issue an Order certifying the CLASS and SUBCLASS, appointing the named PLAINTIFF as representative of all others similarly situated and appointing the law firm(s) representing the named PLAINTIFF as counsel for members of the CLASS;

As to the First Cause of Action for Unlawfully Deducted Wages on Behalf of the CLASS

2. For compensatory damages according to proof, including all wages due and owing as a result of DEFENDANT'S unlawful deduction of wages earned by members of the CLASS;

3. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

4. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

5. For such other and further relief as the court deems just and proper;

As to the Second Cause of Action for Overtime Compensation on Behalf of the CLASS

6. For compensatory damages according to proof, including all wages due and owing

as a result of DEFENDANT'S failure to pay overtime compensation to members of the CLASS;

7. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 1194;

8. For attorneys' fees and costs pursuant to Labor Code Section 1194, or as otherwise permitted by statute;

9. For such other and further relief as the court deems just and proper;

As to the Third Cause of Action for Failure to Allow 30-Minute Employee Meal Periods on Behalf of the CLASS

10. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each work shift in which such member worked more than five hours without being permitted to take the required meal period;

11. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

12. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

13. For such other and further relief as the court deems just and proper;

As to the Fourth Cause of Action for Failure to Allow 10-Minute Employee Rest Periods on Behalf of the CLASS

14. For compensatory damages in the form of additional wages equal to one hour's regular pay for each member of the CLASS for each four hour work period in which such member worked without being permitted to a paid rest period;

15. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

16. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

17. For such other and further relief as the court deems just and proper;

As to the Fifth Cause of Action for Indemnification of Employees for Expenditures or Losses in Discharge of Duties or Obedience to Directions on Behalf of the CLASS

18. For compensatory damages according to proof, including but not limited to expenditures, losses, lost wages, earnings and other employee benefits and all other sums of money owed to each member of the CLASS incurred during the proper discharge of their duties for DEFENDANT, or during the course and scope of their employment for DEFENDANT.

19. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289;

20. For attorneys' fees and costs pursuant to Labor Code § 2802 or as otherwise permitted by statute;

21. For such other and further relief as the court deems just and proper;

As to the Sixth Cause of Action for Improperly Itemized Wage Statements on Behalf of the CLASS

22. For compensatory damages or minimum statutory damages of $50 for the first violation and $100 for each subsequent violation pursuant to Labor Code Section 226(e);

23. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 226(e);

24. For attorneys' fees and costs pursuant to Labor Code Section 226(e) or as otherwise permitted by statute;

25 For such other and further relief as the court deems just and proper;

As to the Seventh Cause of Action for Waiting Time Penalties on Behalf of the SUBCLASS

26. For statutory penalties pursuant to Labor Code Section 203;

27. For pre-judgment interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 218.6;

28. For attorneys' fees and costs pursuant to Labor Code Section 218.5, or as otherwise permitted by statute;

29. For such other and further relief as the court deems just and proper;

As to the Eighth Cause of Action for Unlawful and Unfair Business Practices on Behalf of the CLASS and the General Public

30. For an Order requiring DEFENDANT to identify each of the members of the CLASS by name, home address and home telephone number;

31. For an Order compelling DEFENDANT to restore unpaid wages, expenditures, losses, income and other related benefits (in the form of restitution) to each of the members of the CLASS who have suffered as a result of DEFENDANT'S unlawful and unfair business practices alleged herein;

32. For an order compelling DEFENDANT to disgorge and pay over to each of the members of the CLASS all profits and savings resulting from DEFENDANT'S unlawful and unfair business practices alleged herein;

33. For issuance of a permanent injunction enjoining DEFENDANT from continuing to engage in the unlawful and unfair business practices alleged herein;

34. For interest at the legal rate pursuant to Civil Code Section 3289 and Labor Code Section 204.6;

35. For attorneys' fees and costs pursuant to Labor Code Sections 218.5, 1194 & 2802, Code of Civil Procedure Section 1021.5 and as otherwise permitted by statute;

36. For such other and further relief as the court deems just and proper;

As to the Ninth Cause of Action for Civil Penalties, under Labor Code Private Attorney General Act of 2004, on Behalf of the PLAINTIFF, all other current and former aggrieved employees, and on behalf of the State of California

37. For civil penalties, according to the method of calculations set forth in Labor Code Section 2699;

38. For attorneys' fees pursuant to Labor Code Section 2699 or as otherwise permitted by statute;

39. For costs of suit incurred herein;

40. For such other and further relief as the court deems just and proper

DATED: December 19, 2007

LAW OFFICES OF DAVID A. HUCH

s/ David A. Huch
DAVID A. HUCH

Attorneys for Plaintiff,
PHILIP J. MARTINET
Email: dhuch@onebox.com

Exhibit C

cal sc

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES, LLC, A Delaware Limited Liability Company, Defendants.	Civil No.07cv2178 W (AJB) ORDER FOLLOWING EARLY NEUTRAL EVALUATION CONFERENCE

On February 5, 2008, the Court convened an Early Neutral Evaluation Conference in the above entitled action. Appearing were Derek Emge, Esq., David H. Huch, Esq. and Phil Martinet on behalf of plaintiff; Sam McAdam, Esq. and Tim Thompson, client representative on behalf of defendant.

The case did not settle. The Court, through staff, and counsel discussed compliance with Fed. R. Civ. P. 26 and based thereon, issues the following orders:

1. The Rule 26(f) conference shall be completed before *February 29, 2008*;
2. The date of initial disclosure pursuant to Rule 26(a)(1)(A-D) shall occur before *March 14, 2008*;
3. A discovery plan shall be lodged with Judge Battaglia on or before *March 10, 2008;* and,
4. Counsel are ordered to appear ***by phone on March 21, 2008 at 10:00 a.m.*** for a Case Management Conference pursuant to Federal Rule of Civil Procedure 16(b). Counsel for plaintiff shall initiate the conference call.

Failure of any counsel or party to comply with this Order will result in the imposition of sanctions.

IT IS SO ORDERED.

DATED: February 7, 2008

Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

Exhibit D

S:2/8

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Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	**CIVIL NO. 07-CV-02178 W (AJB)** **PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)** **[FRCP RULE 34]**

PROPOUNDING PARTY: Plaintiff, PHILIP J. MARTINET

RESPONDING PARTY: Defendant, SPHERION ATLANTIC ENTERPRISES LLC

SET NO.: ONE (1)

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), hereby requests that Defendant, SPHERION ATLANTIC ENTERPRISES LLC ("DEFENDANT"), produce and permit counsel for PLAINTIFF to inspect and copy the following documents, which are within YOUR possession, custody or control.

Under Rule 34 of the Federal Rules of Civil Procedure, responding party is required to serve written response to this Request subscribed under oath within 30 days after the service of this Request, upon PLAINTIFF's counsel, Derek J. Emge, EMGE & ASSOCIATES, 550 West "C" Street, Suite 1600, San Diego, CA 92101.

The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated.

If YOU claim any document that YOU are requested to produce is privileged, YOU are requested to provide the following information in writing at the time YOU serve YOUR Response with respect to each such document:

(a) The nature of the privilege YOU claim;

(b) The facts upon which YOU rely as a basis for claiming the privilege;

(c) Each person who prepared the document;

(d) The title and date of the document;

(e) The general subject matter of the document;

(f) Each person who signed the document;

(g) Each person to whom the document was directed, circulated or shown; and,

(h) Each person now in possession of the document or any copy thereof.

DEFINITIONS

As used herein, the terms "YOU" and "YOUR" include you, SPHERION ATLANTIC ENTERPRISES LLC, and any PERSON or entity acting on your behalf, including any employees, agents, representatives, officers, directors, consultants, or other such persons.

As used herein, the term "PERSON" or "PERSONS" includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

As used herein, the terms "DOCUMENT" or "DOCUMENTS" refer to any writing as described in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostatting, photographing, and every other means of recording upon any tangible thing, and form of communicating or representation, including electronic mail (E-Mail), notes, letters, memoranda, reports, diagrams, charts, words, pictures, sounds, or symbols, or combinations of them. and in the broadest sense possible, the original and all non-identical copies of all writings, whether handwritten, typed, printed, or otherwise produced. This definition also includes, without limitation, letters, correspondence, memoranda, legal pleadings, calendars, appointment books, diaries, travel records, summaries, or records of telephone conversations or interviews, telegrams, notes, reports, compilations, work papers, graphs, charts, boards, pamphlets, brochures, circulars, annuals, instructions, ledgers, sales literature, advertising literature, promotional literature, agreements, minutes of meetings and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photostatic or other copy, magnetic or electrical impulse, or other form of communication is recorded or reproduced, and includes preliminary drafts, studies, analyses, and reports as well as any non-identical copy or copies of any of the foregoing now in YOUR possession, custody, or control. The term "DOCUMENT" also includes electronic data which means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmissions, notations, or highlighting of any kind) of mechanical, facsimile, electronic, magnetic, digital, or other programs whether private, commercial or work-in-progress, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including work processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code of all types, PDF files, batch files, ASCII files and any and all miscellaneous media on which they reside and regardless of whether said electronic data exists in an active file, deleted file, or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROM, Bernoulli Boxes and their equivalent, magnetic tape of all types, microfiche, punched cards, punched tape, computer chips including, but not limited to EPROM, PROM, RAM, and ROM on or in any other vehicle for digital data storage and/or transmittal.

As used herein, the term "IDENTIFY" when used in the context to "identify" a PERSON, when used in reference to a natural person, means to give (i) the person's full name; (ii) present or last known address and telephone number; (iii) job title and description; (iv) dates of employment at SPHERION ATLANTIC ENTERPRISES LLC, if applicable.

As used herein, the term "IDENTIFY" when used in the context to "identify" a DOCUMENT, means to give (i) the type of document; (ii) general subject matter; (iii) the date of the document; (iv) the author(s); (v) addressee(s); and (vi) recipients(s).

As used herein, the term "PERTAINING TO" means and includes mentioning, discussing, summarizing, describing, reflecting, containing, including, referring to, relating to, depicting, connected with, embodying, evidencing, constituting, concerning, reporting, or involving an act, occurrence, event, transaction, fact, thing, or course of dealing.

REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)

REQUEST FOR PRODUCTION NO. 1:

Produce any and all DOCUMENTS that YOU contend demonstrate the number of hours worked by PLAINTIFF, on both a daily and weekly basis, during his employment with YOU.

REQUEST FOR PRODUCTION NO. 2:

Produce any and all DOCUMENTS that YOU contend demonstrate PLAINTIFF was provided with state-mandated 30-minute meal breaks during his employment with YOU.

REQUEST FOR PRODUCTION NO. 3:

Produce any and all DOCUMENTS that YOU contend demonstrate YOUR California-based non-exempt employees, other than PLAINTIFF, have been provided with state-mandated 30-minute meal breaks from September 2003 to the present.

REQUEST FOR PRODUCTION NO. 4:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR meal break policies are dependent upon a non-exempt employee's job duties.

REQUEST FOR PRODUCTION NO. 6:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR meal break policies are dependent upon a non-exempt employee's job title.

REQUEST FOR PRODUCTION NO. 7:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR overtime compensation policies are dependent upon a non-exempt employee's job duties.

REQUEST FOR PRODUCTION NO. 8:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR overtime compensation policies are dependent upon a non-exempt employee's job title.

REQUEST FOR PRODUCTION NO. 9:

Produce PLAINTIFF's personnel file in its entirety.

REQUEST FOR PRODUCTION NO. 10:

Produce any and all employee handbooks that YOU have distributed to YOUR California-based non-exempt employees that were in force and effect from September 2003 to the present.

REQUEST FOR PRODUCTION NO. 11:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing state-mandated 30-minute meal breaks to YOUR California-based non-exempt employees.

REQUEST FOR PRODUCTION NO. 12:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing state-mandated 10-minute rest periods to YOUR California-based non-exempt employees.

REQUEST FOR PRODUCTION NO. 13:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing overtime compensation to YOUR California-based non-exempt employees.

REQUEST FOR PRODUCTION NO. 14:

Produce any and all DOCUMENTS that PLAINTIFF has signed relating to the obtaining, holding or termination of her employment with YOU.

REQUEST FOR PRODUCTION NO. 15:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO taking 30-minute meal breaks.

REQUEST FOR PRODUCTION NO. 16:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO taking 10-minute rest periods.

REQUEST FOR PRODUCTION NO. 17:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO the payment of overtime compensation for hours worked in excess of eight hours per day or forty hours per week.

REQUEST FOR PRODUCTION NO. 18:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees taking 30-minute meal breaks.

REQUEST FOR PRODUCTION NO. 19:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees taking 10-minute rest periods.

REQUEST FOR PRODUCTION NO. 20:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees working overtime hours.

REQUEST FOR PRODUCTION NO. 21:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees being paid overtime compensation.

REQUEST FOR PRODUCTION NO. 22:

Produce any and all written communications, including Email communications, between PLAINTIFF and any of YOUR employees, managers, officers, directors or managing agents.

REQUEST FOR PRODUCTION NO. 23:

Produce PLAINTIFF's payroll records.

REQUEST FOR PRODUCTION NO. 24:

Produce any and all notices of commendation, warning and/or discipline relating to PLAINTIFF's employment with YOU.

DATED: February 8, 2008

LAW OFFICES OF DAVID A. HUCH

[signature]

DAVID A. HUCH
dhuch@onebox.com
Attorneys for Plaintiff,
PHILIP J. MARTINET

Exhibit E

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Attorneys for Plaintiff, PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendants.	**CIVIL NO. 07-CV-02178 W (AJB)** **PLAINTIFF'S INTERROGATORIES (SET ONE)** **[FRCP RULE 33]**

PROPOUNDING PARTY: Plaintiff, PHILIP J. MARTINET

RESPONDING PARTY: Defendant, SPHERION ATLANTIC ENTERPRISES LLC

SET NO.: ONE (1)

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff, PHILIP J. MARTINET ("PLAINTIFF"), propounds the following first set of interrogatories to Defendant, SPHERION ATLANTIC ENTERPRISES LLC ("DEFENDANT").

Under Rule 33 of the Federal Rules of Civil Procedure, Responding Party shall serve a copy of the answers, and objections, if any, within 30 days after the service of the interrogatories. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event Responding Party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them, and the objections signed by the attorney making them. All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless Responding Party's failure to object is excused by the court for good cause shown

DEFINITIONS

As used herein, the terms "YOU" and "YOUR" include you, SPHERION ATLANTIC ENTERPRISES LLC, and any PERSON or entity acting on your behalf, including any employees, agents, representatives, officers, directors, consultants, or other such persons.

As used herein, the term "PERSON" or "PERSONS" includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

As used herein, the terms "DOCUMENT" or "DOCUMENTS" refer to any writing as described in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostatting, photographing, and every other means of recording upon any tangible thing, and form of communicating or representation, including electronic mail (E-Mail), notes, letters, memoranda, reports, diagrams, charts, words, pictures, sounds, or symbols, or combinations of them. and in the broadest sense possible, the original and all non-identical copies of all writings, whether handwritten, typed, printed, or otherwise produced. This definition also includes, without limitation, letters, correspondence, memoranda, legal pleadings, calendars, appointment books, diaries, travel records, summaries, or records of telephone conversations or interviews, telegrams, notes, reports, compilations, work papers, graphs, charts, boards, pamphlets, brochures, circulars, annuals, instructions, ledgers, sales literature, advertising literature, promotional literature, agreements, minutes of meetings and all other tangible things upon which any handwriting, typing, printing, drawing, representation, photostatic or other copy, magnetic or electrical impulse, or other form of communication is recorded or reproduced, and includes preliminary drafts, studies, analyses, and reports as well as any non-identical copy or copies of any of the foregoing now in YOUR possession, custody, or control. The term "DOCUMENT" also includes electronic data which means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmissions, notations, or highlighting of any kind) of mechanical, facsimile, electronic, magnetic, digital, or other programs whether private, commercial or work-in-progress, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including work processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code of all types, PDF files, batch files, ASCII files and any and all miscellaneous media on which they reside and regardless of whether said electronic data exists in an active file, deleted file, or file fragment. Electronic data includes any and all items stored on computer memories, hard disks, floppy disks, CD-ROM, Bernoulli Boxes and their equivalent, magnetic tape of all types, microfiche, punched cards, punched tape, computer chips including, but not limited to EPROM, PROM, RAM, and ROM on or in any other vehicle for digital data storage and/or transmittal.

As used herein, the term "IDENTIFY" when used in the context to "identify" a PERSON, when used in reference to a natural person, means to give (i) the person's full name; (ii) present or last known address and telephone number; (iii) job title and description; (iv) dates of employment at SPHERION ATLANTIC ENTERPRISES LLC, if applicable.

As used herein, the term "IDENTIFY" when used in the context to "identify" a DOCUMENT, means to give (i) the type of document; (ii) general subject matter; (iii) the date of the document; (iv) the author(s); (v) addressee(s); and (vi) recipients(s).

As used herein, the term "PERTAINING TO" means and includes mentioning, discussing, summarizing, describing, reflecting, containing, including, referring to, relating to, depicting, connected with, embodying, evidencing, constituting, concerning, reporting, or involving an act, occurrence, event, transaction, fact, thing, or course of dealing.

INTERROGATORIES (SET ONE)

INTERROGATORY NO. 1:

IDENTIFY all of YOUR California-based non-exempt employees who are currently employed by YOU or were previously employed by YOU from September 2003 to the present.

INTERROGATORY NO. 2:

State the total number of California-based non-exempt employees YOU have employed from September 2003 to the present.

INTERROGATORY NO. 3:

State the total number of California-based non-exempt employees YOU have employed per each pay period from December 2006 to the present.

INTERROGATORY NO. 4:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO meal breaks for YOUR California-based non-exempt employees that are dependent upon an employee's job duties?

INTERROGATORY NO. 5:

If YOUR response to Interrogatory No. 4, above, is in the affirmative, identify all such differences in YOUR meal break policies.

INTERROGATORY NO. 6:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO meal breaks for YOUR California-based non-exempt employees that are dependent upon an employee's job title?

INTERROGATORY NO. 7:

If YOUR response to Interrogatory No. 6, above, is in the affirmative, identify all such differences in YOUR meal break policies.

INTERROGATORY NO. 8:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO paying overtime compensation to YOUR California-based non-exempt employees that are dependent upon an employee's job duties?

INTERROGATORY NO. 9:

If YOUR response to Interrogatory No. 8, above, is in the affirmative, identify all such differences in YOUR overtime compensation policies.

INTERROGATORY NO. 10:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO paying overtime compensation to YOUR California-based non-exempt employees that are dependent upon an employee's job title?

INTERROGATORY NO. 11:

If YOUR response to Interrogatory No. 10, above, is in the affirmative, identify all such differences in YOUR overtime compensation policies.

INTERROGATORY NO. 12:

Have all of YOUR California-based non-exempt employees received their pay through a common payroll system between September 2003 and the present?

INTERROGATORY NO. 13:

If YOUR response to Interrogatory No. 12, above, is in the negative, identify all payroll systems YOU have used to pay YOUR California-based non-exempt employees from September 2003 to the present.

DATED: February 8, 2008

LAW OFFICES OF DAVID A. HUCH

DAVID A. HUCH
dhuch@onebox.com
Attorneys for Plaintiff,
PHILIP J. MARTINET

Exhibit F

McKelvey, Brandon R.

From: dhuch@onebox.com
Sent: Wednesday, March 05, 2008 11:28 AM
To: McKelvey, Brandon R.
Cc: derek@inthelaw.com; McAdam, Sam
Subject: Martinet v. Spherion: Confirmation of terms of Discovery Extension

Brandon,

This email confirms our discovery agreement in which Plaintiff agrees to grant SPHERION an extension of three weeks to respond to all outstanding discovery requests in Plaintiff's first set of discovery ***except for Interrogatory No. 1*** [regarding the disclosure of names and contact information of all putative class members and aggrieved employees] and ***Request for Production No. 3*** [regarding records of meal break compliance for all putative class members and aggrieved emmployees].

Accordingly, SPHERION's responses to Plaintiff's Interrogatory No. 1 and Request for Production No. 3 are still due in one week on March 12, 2008. All other responses to Plaintiff's Interrogatories and Requests for Production of Documents are due on April 2, 2008.

As always, please feel free to contact myself or Derek if you wish to discuss this matter further.

Sincerely,

Dave

David A. Huch
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The information contained in this electronic mail transmission is confidential and intended to be sent only to the stated recipient of the transmission. It may therefore be protected from unauthorized use or dissemination by the attorney-client and/or attorney work-product privileges. If you are not the intended recipient or the intended recipient's agent, you are hereby notified that any review, use, dissemination, distribution or copying of this communication is strictly prohibited. You are also asked to notify us immediately by telephone and to delete this transmission with any attachments and destroy all copies in any form. Thank you in advance for your cooperation.

Exhibit G

SEYFARTH SHAW LLP
Samuel T. McAdam (SBN 186084)
Brandon R. McKelvey (SBN 217002)
Anthony J. Musante (SBN 252097)
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SPHERION ATLANTIC ENTERPRISES LLC

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Attorneys for Plaintiff, PHILIP MARTINET, Individually, On Behalf of All Others Similarly Situated, All Other Aggrieved Employees and on Behalf of the General Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **JOINT MOTION REGARDING PARTIES' DISCOVERY PLAN** **DISCOVERY MATTER** Complaint Filed: September 25, 2007

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TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 26(f), counsel for Defendant Spherion Atlantic Enterprises LLC ("Spherion" or "Defendant") and counsel for Plaintiff Philip Martinet ("Martinet" or "Plaintiff"), met and conferred via telephone on February 29, 2008, in accordance with the February 7, 2008 Order of the Honorable Anthony J. Battaglia. Counsel discussed the nature and bases of their claims and defenses and the possibilities for a prompt settlement but were unable to resolve the case. Counsel further agreed to the following stipulation regarding the parties' discovery plan:

1. Required disclosures under F.R.C.P. 26(a)(1)A-D will be made, in accordance with Judge Battaglia's Order, by no later than March 14, 2008.

2. Pursuant to an agreement reached by the parties in Judge Battaglia's conference room at the ENE Conference on February 5, 2008, the parties stipulated to the commencement of discovery on certain pre-certification issues prior to the submission of the present discovery plan. Accordingly, Plaintiff's first set of written discovery, addressing only pre-certification issues, was propounded on February 8, 2008. The parties have met and conferred and agreed to extend the time Defendant has to respond to a significant portion of this discovery until April 2, 2008. The remainder is due on March 12, 2008.

3. There is a dispute between the parties as to the scope of pre-class certification discovery.

   Plaintiff maintains that Defendant's disclosure of the identification and contact information of all aggrieved employees under Plaintiff's Labor Code Private Attorney General Act (California Labor Code § 2699 *et. seq.*)

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("PAGA") and putative class members under Plaintiff's other California Labor Code claims is allowed prior to certification of the class. Plaintiff further contends that aspects of class-certification discovery and merits discovery overlap. Accordingly, Plaintiff contends that the following issues are discoverable prior to the Court's ruling on Plaintiff's anticipated motion to certify Plaintiff's class claims: (a) identification of all employees during the putative class period; (b) the basis for penalties, including but not limited to, employee time records and employee wage records on a per-pay-period basis from December 19, 2006 to the present.

Defendant contends that Spherion is a unique business entity with numerous decentralized offices and franchises throughout the state and pre-class certification discovery seeking information relating to thousands of its state-wide employees at hundreds of different offices and franchises is unreasonably broad, unduly burdensome, and irrelevant to certification of a class common to the Plaintiff. This discovery also violates employee privacy. Defendant further contends that Plaintiff must first establish prima-facie class-certification requirements under F.R.C.P. 23 before seeking broad, voluminous, and costly state-wide discovery related to thousands of employees who share no commonality or typicality with the named Plaintiff.

Although the parties intend to continue to meet and confer in good faith regarding this discovery issue, it is anticipated that judicial intervention may be required to resolve this issue.

Plaintiff's counsel believes this dispute can be resolved quickly and informally at the March 21, 2008 Case Management Conference. Although Defense counsel is not opposed to an expedited or informal resolution process,

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Defendant would prefer to have this dispute heard pursuant to a motion and hearing because the dispute is complex, there are a number of legal and factual issues that need to be presented to the Court, and the expense and burden associated with complying with Plaintiff's state-wide discovery is enormous. Defendant anticipates moving for a protective order under Rule 26(c) because of the extreme burden posed by Plaintiff's discovery requests.

4. Counsel have agreed that the following specific discovery will be necessary to evaluate this case: (a) Defendant's deposition of Plaintiff and Plaintiff's percipient witnesses; (b) Plaintiff's deposition of the Defendant's Persons Most Knowledgeable with respect to the following issues: (i) Defendant's meal break policies with respect to its non-exempt California employees from September 2003 to the present; (ii) Defendant's rest period policies with respect to its non-exempt California employees from September 2003 to the present; (iii) Defendant's time-keeping policies with respect to its non-exempt California employees from September 2003 to the present; (iv) Defendant's overtime policies with respect to its non-exempt California employees from September 2003 to the present; (v) Defendant's reimbursement of employee expenditures policies with respect to its non-exempt California employees from September 2003 to the present; (vi) Defendant's payroll record keeping policies with respect to its non-exempt California employees from September 2003 to the present; (vii) Defendant's policies related to itemized wage statements with respect to its non-exempt California employees from September 2003 to the present; and (viii) Defendant's policies related to payment of all compensation upon employees' separation of employment with respect to its non-exempt California employees from September 2003 to the

present; and (c) Plaintiff's deposition of an agreed-upon limited number of Defendant's officers and managing agents regarding Defendant's corporate structure and its business relationships with its affiliated corporations, limited liability companies, and other business entities.

8. Defendant will make its employee and management witnesses available for deposition in their city of residence, without the need for subpoena.

9. Prior to Plaintiff's motion for class certification Defendant anticipates the following discovery: (a) written interrogatories to Plaintiff; (b) document requests to Plaintiff; (c) depositions of the Plaintiff; and (d) depositions of any percipient witnesses identified in discovery. Defendant will also seek to depose any witnesses who submits evidence or testimony in support of Plaintiff's motion for class certification.

10. Counsel fully reserve the right to conduct additional discovery that may be required, including but not limited to depositions not identified herein (subject to the limitations set by Federal Rules of Civil Procedure and local rules), and expert witness discovery.

11. Counsel presently foresee the need for changes in the limitations on discovery imposed under the Federal Rules of Civil Procedure. Specifically, Defendant anticipates that Plaintiff's deposition may take more than 7 hours. Similarly, Plaintiff anticipates that the depositions of Defendant's Person(s) Most Knowledgeable may take more than 7 hours. Counsel have agreed to enter into separate agreements, as necessary, to protect any information and/or documents protected by confidentiality or right to privacy.

This Joint Discovery Plan is being lodged with Judge Battaglia pursuant to the Court's February 7, 2008 Order.

Case 3:07-cv-02178-W-AJB Document 17 Filed 03/10/2008 Page 6 of 6

DATED: March 10, 2008

SEYFARTH SHAW LLP

By ______________________
Samuel T. McAdam
Brandon R. McKelvey
Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC; SPHERION PACIFIC WORKFORCE LLC

DATED: March 10, 2008

EMGE & ASSOCIATES

By ______________________
Derek J. Emge
Attorneys for Plaintiffs
PHILIP MARTINET Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

DATED: March 10, 2008

LAW OFFICES OF DAVID A. HUCH

By ______________________
David A. Huch
Attorneys for Plaintiffs
PHILIP MARTINET Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public

Exhibit H

3/12

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Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE), REQUEST NUMBER 3**

PROPOUNDING PARTY: PLAINTIFF, PHILIP J. MARTINET

RESPONDING PARTY: DEFENDANT, SPHERION ATLANTIC ENTERPRISES LLC

SET NUMBER: ONE, REQUEST NUMBER 3

Pursuant to FRCP 34, and all other applicable rules, defendant Spherion Atlantic Enterprises, LLC ("defendant") hereby responds to plaintiff's requests for production of documents (set one), Request Number 3. Defendant does not admit the materiality, relevance or admissibility of the evidence of the matters set forth herein. Discovery and investigation in this matter are continuing and defendant reserves the right to supplement the responses set forth herein and to present and rely upon evidence discovered subsequent to these responses.

REQUEST FOP PRODUCTION NO. 3

Produce any and all DOCUMENTS that YOU contend demonstrate YOUR California-based non-exempt employees, other than PLAINTIFF, have been provided with state-mandated 30-minute meal breaks from September 2003 to the present.

RESPONSE TO REQUEST NO. 3

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Defendant further objects to this interrogatory to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further

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objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

DATED: March 12, 2008

SEYFARTH SHAW LLP

BY
Samuel T. McAdam
Brandon R. McKelvey
Anthony J. Musante
Attorneys For Defendants
SPHERION ATLANTIC ENTERPRISES LLC;
SPHERION PACIFIC WORKFORCE LLC

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On March 12, 2008, I served the within documents:

DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS (SET ONE), REQUEST NUMBER 3

☐ I sent such document from facsimile machine (916) 558-4839 on March 12, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at 400 Capitol Mall, Suite 2350, Sacramento, California 95814, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Sacramento, California, addressed as set forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on March 12, 2008, at Sacramento, California.

E Holmes

Elizabeth Holmes

Exhibit I

3/12

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Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S INTERROGATORIES (SET ONE), INTERROGATORY NO. 1**

PROPOUNDING PARTY: PLAINTIFF, PHILIP J. MARTINET

RESPONDING PARTY: DEFENDANT, SPHERION ATLANTIC ENTERPRISES LLC

SET NUMBER: ONE, INTERROGATORY NUMBER 1

Pursuant to FRCP 33 and all other applicable rules, defendant Spherion Atlantic Enterprises, LLC ("defendant") hereby responds to plaintiff's Interrogatories (Set One), Interrogatory Number 1. Defendant does not admit the materiality, relevance or admissibility of the evidence of the matters set forth herein. Discovery and investigation in this matter are continuing and defendant reserves the right to supplement the responses set forth herein and to present and rely upon evidence discovered subsequent to these responses.

INTERROGATORY NO. 1:

IDENTIFY all of YOUR California-based non-exempt employees who are currently employed by YOU or were previously employed by YOU from September 2003 to the present.

RESPONSE TO INTERROGATORY NO. 1:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Defendant further objects to this interrogatory to the extent that it seeks information protected by Spherion employees' right of privacy.

DATED: March 12, 2008

SEYFARTH SHAW LLP

BY [signature]
Samuel T. McAdam
Brandon R. McKelvey
Anthony J. Musante
Attorneys For Defendants
SPHERION ATLANTIC ENTERPRISES LLC;
SPHERION PACIFIC WORKFORCE LLC

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On March 12, 2008, I served the within documents:

DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S INTERROGATORIES (SET ONE), INTERROGATORY NO. 1

☐ I sent such document from facsimile machine (916) 558-4839 on March 12, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

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I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on March 12, 2008, at Sacramento, California.

E Holmes
Elizabeth Holmes

Exhibit J

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March 19, 2008

VIA FACSIMILE & U.S. MAIL
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Brandon R. McKelvey
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Sacramento, California 95814-4428

Re: ***Martinet v. Spherion Atlantic Enterprises, LLC***
S.D. Cal Case No. 07CV2178 W (AJB)

Dear Mr. McKelvey:

This letter serves as a reasonable and good faith attempt to resolve informally several pending discovery issues pertaining to our client's, Mr. Philip J. Martinet ("Plaintiff"), first set of written discovery propounded to your client, Spherion Atlantic Enterprises LLC ("Defendant"). Regrettably, your client has alleged a litany of merit-less objections in response to Plaintiff's Interrogatory No. 1 and Request for Production No. 3. This is particularly disappointing considering the fact that Plaintiff has granted your client a three-extension to respond to the vast majority of Plaintiff's discovery items other than these two straightforward requests.

We are nevertheless hopeful that the meet and confer process will urge your client to provide complete, amended responses to these disputed discovery items. Accordingly, the following is an itemized list for each item in dispute, along with a description of the deficiencies in your client's responses.

Interrogatory Number One

This interrogatory simply seeks the names and contact information of putative class members. In examining your client's objections, it is clear that all objections lack merit:

a. "unreasonably broad," "unduly burdensome" and "oppressive"

"Unreasonably broad" is not a proper objection.(*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771.]) Furthermore, "burdensome" is also an improper objection. The ground for such an objection must be "oppression." Thus, it is not enough that the questions will require a lot of work to answer. It must be shown that the burden of answering is so *unjust* that it amounts to oppression. *West Pico Furn. Co. v. Sup. Ct.* (1961) 56 Cal.2d 407, 418-419.]]

The Court will sustain an objection on "oppression" grounds only where it appears that the amount of work required to answer the questions is so great, and the utility of the information sought so minimal, that it would defeat the ends of justice to require the answers. (*See Columbia Broadcasting System, Inc. v. Sup. Ct.* (1968) 263 Cal.App.2d 12, 19) and *West Pico Furn. Co. v. Sup. Ct., supra.*)

Clearly, if this matter is required to be litigated on a Motion to Compel, your client will not be able to satisfy this test. The information sought in this special interrogatory should be readily available to your client; and, the utility of the information is substantial since it goes to the heart of the Putative Class claims as well as Mr. Martinet's cause of action under the Labor Code Private Attorneys General Act of 2004 ("PAGA") (Labor Code § 2698 *et seq.*).

In addition, on a Motion to Compel, the burden will be on your client to sustain the objection by detailed evidence showing precisely *how much* work is required to answer; conclusionary statements, such as those stated in your client's present response, are not sufficient. *West Pico Furn. Co. v. Sup. Ct., supra*, 56 Cal.2d at 418-419 (declaration by manager that search of 78 branch offices would be required was insufficient to constitute "oppression.")

b. "plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied..."

Why Defendant even makes this argument in connection with Plaintiff's Interrogatory No. One is a mystery. All of the cases cited herein involve *pre-certification* disclosure of the names and contact information of *putative* class members. As a result, Defendant's objection that Plaintiff's discovery request cannot go forward prior to class certification is without merit.

Also, in addition to Plaintiff's class claims, this information is clearly discoverable under Plaintiff's PAGA claim. In fact, PAGA does not contain any class action restrictions. On this point, Defendant will be unable to cite one case holding that a PAGA claim must be certified as a class action before proceeding to trial.

A recent federal decision suggests that no such restrictions exist. In *De Simas v. Big Lots Stores, Inc.* (N.D. Cal., filed March 2, 2007) 2007 U.S. Dist. LEXIS 19257, the district court explains the scope of a plaintiff's PAGA claim: "Plaintiffs are thus correct that the '**aggrieved employee' bringing a PAGA claim need not have a valid claim for all of the violations brought under the claim**. The employee must, however, have a valid claim for at least one of those violations." *Id.* at pp. * 12-13. [Emphasis added.] Thus, if a plaintiff need not bring PAGA claims that contain the requisite typicality and commonality, it only follows that class certification is not required.

In addition, PAGA's definition of an "aggrieved employee" does not contemplate an employee being required *to prove* Labor Code violations before maintaining a PAGA cause of action. Rather, the Legislature defined "aggrieved employee" as "any person who was employed by the **alleged** violator and against whom one or more of the **alleged** violations was committed." Labor Code § 2699(c). [Emphasis added.] The plain language of PAGA simply requires factual *allegations*, not *proof*, of Labor Code violations. If Defendant believed that Plaintiff's claims were frivolous, malicious or without any basis, it should have challenged Plaintiff's operative complaint at the pleading stage. Instead, Defendant answered the complaint, and the case has been at issue for several months. Defendant's present objection in the middle of the civil discovery process is an untimely and improper challenge to Plaintiff's representative efforts on behalf of all "aggrieved employees."

The legislative history of PAGA explains that the LWDA is "understaffed" and "under-funded," and therefore the purpose of the law is to rely on employee whistleblowers and their counsel to enforce the Labor Code in private civil actions. A recent decision explains that PAGA was enacted "to augment the enforcement abilities of the Labor Commissioner with a private attorney general system for labor law enforcement," and thus "**empowers or deputizes an aggrieved employee to sue for civil penalties**..." [Emphasis added.] *Dunlap v. Superior Court of Los Angeles County* (2006) 142 Cal. App. 4th 330, 337. Thus, we have been commissioned, or "deputized," to pursue Labor Code violations against your client on a statewide basis.

Since the purpose behind PAGA's penalty scheme is to enforce California wage and hour law and provide the State with 75% of all civil penalties recovered, the Legislature has not included class action standards or restrictions in PAGA. Thus, these remedies are cumulative to Mr. Martinet's class claims and will be litigated in the present matter regardless of the Court's ruling on the suitability of the present matter for class treatment.

c. "seeks information protected by Spherion employees' right to privacy"

Defendant's privacy objection also fails, as recent case law overwhelmingly supports disclosure in this instance. In a leading California case on this topic, *Planned Parenthood Golden Gate v. Superior Court* ((2000) 83 Cal.App.4th 347), the court held that "the constitutional right of privacy is not absolute and must therefore be balanced against other important interests." (*Id.* at 356.) In balancing the interests, the Court went on to explain:

> The strength of an individual's interest in keeping personal information private depends in large part of the consequence of disclosure. Courts look to human experience to determine the likely effect of disclosure of the information at issue. (*Id.* at 359.)

Recently, the California Supreme Court addressed this balancing test in the class action context. The Court subsequently held that the names and phone numbers of putative class members can be disclosed to counsel for the named plaintiff(s) through pre-class certification discovery. *Pioneer Electronics, Inc. v. Superior Court* (2007) 40 Cal. 4th 360, 373:

> Contact information regarding the identity of potential class members is generally discoverable, so that a lead plaintiff may learn the names of other persons who might assist in prosecuting the case. Code Civ. Proc., § 2017.010. Such disclosure involves no revelation of personal or business secrets, intimate activities, or similar private information, and threatens no undue intrusion into one's personal life, such as mass-marketing efforts or unsolicited sales pitches.

Five other California cases have addressed the issue of pre-certification discovery of the identity of class members. Each agrees that disclosure is required. For instance, last year the Court of Appeal, Division Seven, Second Appellate District applied the holding of *Pioneer Electronics* to wage and hour class actions, declaring:

> **The balance of opposing interests here tilts even more in favor of the court's disclosure order than it did in *Pioneer*, because at stake here is the fundamental public policy underlying California's employment laws**. '[T]he prompt payment of wages due an employee is a fundamental policy of this state.' [Citation.] *Belaire-West Landscaping, Inc. v. Superior Court* (2007) 149 Cal. App. 4th 554, 562. [Emphasis added.]

Similarly, in *Parris v. Superior Court* (2003) 109 Cal.App.4th 285, the named plaintiffs sought leave to have pre-certification communication with the class members, and to compel discovery of the names and addresses of potential class members. Division Seven of the Second Appellate District concluded that no leave was required simply to communicate with potential class members, but that the trial court abused its discretion in denying the motion to compel discovery. *Id.* at 290.

Also, in *Best Buy Stores, L.P. v. Superior Court*(2006) 137 Cal.App.4th 772, the representative plaintiff was an attorney who had also intended to represent the class. Intervening authority held that a lawyer could not be both a class representative and class counsel. As a result, plaintiff sought pre-certification discovery to seek additional class representatives. Division Three of the Fourth Appellate District upheld the trial court's order granting such discovery. *Id.* at p. 779.

This year, two additional published appellate opinions were rendered, further supporting Plaintiff's position on this legal issue. In *Puerto v. Superior Court* (*Wild Oats*) ___Cal.App.4th____ (filed January 15, 2008) the Court of Appeal, Second Appellate District, Division Seven affirmed the holding of *Belaire-West Landscaping, Inc.* and held that an "opt-in notice" ordered by the trial court "unduly hampers petitioners in conducting discovery to which they are entitled by erecting obstacles that not only exceed the protections necessary to adequately guard the privacy rights of the employees involved but also exceed the discovery protections given by law to far more sensitive personal information." [Slip opinion at page 2.]

Furthermore, in *CashCall, Inc. v. Superior Court*, ___ Cal.App.4th ___ (Jan. 24, 2008), the Fourth Appellate District, Division One held that the trial court appropriately permitted "precertification discovery in a class action for the purpose of identifying class members who may become substitute plaintiffs in place of named plaintiffs who were not members of the class they purported to represent." [Slip op. at 2.] The Court reasoned that because there was no state or other pending investigation involving CashCall's secret call monitoring program, absent continuation of the instant class action, there likely would be no other investigation of CashCall's conduct or potential relief obtained by class members for its alleged violations of their privacy rights. [Slip op. at 34.] "Neither the reasoning nor the result in *First American* [146 Cal.App.4th 1564 (2007)] persuades us that the trial court in this case abused its discretion by granting the plaintiffs' motion for precertification discovery of the identities of class members. Rather, we conclude the trial court, in applying the *Parris* balancing test, did not abuse its discretion." [*CashCall*, Slip op. at 34-35.]

Several district court decisions also overwhelmingly reject Defendant's privacy objection. In fact, the federal courts appear to have determined that an "opt out notice" is not even necessary. Instead, protective orders have been deemed to safeguard employees' privacy rights. For example, in *Putnam v. Eli Lilly & Company* (C.D. Cal 2007) 508 F. Supp. 2d 812, the district court granted Plaintiff's motion to compel the names and contact information of hundreds of Defendant's employees. *Id.* at 815. In doing so, the court "balanced defendant's asserted right to privacy against the relevance and necessity of the information being sought by plaintiff" and determined that "plaintiff's needs here outweigh the concerns of defendant." *Id.* at 814.

In *Putnam v. Eli Lilly & Company*, the district court held that a protective order was sufficient to protect the privacy interests of the defendant employer's employees: "This information must be disclosed to enable plaintiff to proceed; **a protective order can strike the appropriate balance between the need for the information and the privacy concerns**." *Putnam v. Eli Lilly & Company*, 508 F. Supp. 2d at 814.

Furthermore, just last month, in *Dibel v. Jenny Craig, Inc.* (S.D Cal, filed February 7, 2008) 2008 U.S. Dist. LEXIS 9127, District Court Judge Janis L. Sammartino upheld Magistrate Judge Anthony J. Battaglia's discovery order mandating the disclosure of the identity and contact information of the defendant's employees: "The magistrate judge's finding that these California employees would have knowledge of relevant background facts, regardless of whether they were eligible to participate as members of the class, is not contrary to law." *Id.* at p. * 11, fn. 4. Here, District Judge Sammartino also approved the magistrate judge's issuance of a protective order before disclosure in order "to address concerns of privilege and privacy." *Dibel v. Jenny Craig, Inc.*, at p. * 12.

Similarly, in *Salazar v. Avis Budget Group, Inc.*, 2007 WL 2990281 (S.D. Cal., filed Oct. 10, 2007), a federal district court applied the rules outlined in *Pioneer Electronics* and ordered the defendant to disclose the class members' contact information after an "opt-out" notice was given. Foreshadowing the Court of Appeal's ruling in *CashCall, Inc. v. Superior Court*, Magistrate Judge McCurine observed that "the minimal information Plaintiff requests is indeed contemplated under the Federal Rules of Civil Procedure … as basic to the discovery process." *Id.* at *2. He also expressed skepticism about the employer-defendant's professed solicitude for the class members' privacy rights, observing that its conduct suggested that its "concern about the privacy rights of the potential class members is actually driven more by [its own] self-interest." *Id.* Finally, he noted the importance of class actions generally (as did the California Supreme Court in *Pioneer Electronics*): "[C]lass action lawsuits can serve a valuable social function in addressing the rights of the public. The voice of a class rings more loudly and garners more attention than a single voice."

Thus, under clear guidance from California and federal courts, the right to privacy does not prohibit the disclosure of putative class members' names and contact information. To the contrary, Plaintiff's present discovery efforts are being brought for the benefit of such employees, so that a fundamental policy of the State of California can be enforced. As a result, an amended response to Interrogatory No. 1 is required. Plaintiff is certainly willing to enter into a comprehensive protective order before putative class members' names and identities are disclosed.

In the alternative, Plaintiff is also willing to follow the "opt out notice" procedures, as explained in detail in the *Belaire-West Landscaping, Inc.* and *Salazar v. Avis Budget Group, Inc* opinions. Accordingly, enclosed with this letter is a proposed Notice to be disseminated to all applicable employees through an "opt out" procedure.[1] Please notify us within 10 days of your receipt of this letter if your client wishes to follow this stream-lined and efficient procedure, which has been endorsed by the higher courts.

Request for Production of Documents Number Three

This request seeks documents demonstrating Defendant's compliance with California's strict statutory and regulatory law on meal breaks. Once again, your client has alleged a litany of meritless objections to both document requests.

As explained above, PAGA does not contain any class action restrictions. Instead, we have been "deputized" to seek civil penalties on behalf of the State of California and SPHERION's hourly employees. Since the purpose behind PAGA's penalty scheme is to enforce California wage and hour law and provide the State with 75% of all civil penalties recovered, the Legislature has not included class action standards or restrictions in PAGA.

---

[1] We are also willing to discuss the sharing of costs associated with dissemination of the proposed Notice.

Furthermore, the records sought in document request number three are designed to streamline the present dispute and narrow the issues for trial. As explained by the California Supreme Court in the landmark *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094 decision, the existence of written records demonstrating meal break compliance is the central article of proof in the present wage and hour suit:

> Finally, we recognize that the primary purpose of the statutes of limitation is to prevent plaintiffs from asserting stale claims once evidence is no longer fresh and witnesses are no longer available. **Because employers are required to keep all time records, including records of meal periods, for a minimum of three years, employers should have the evidence necessary to defend against plaintiff's claims**. *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th at 1114. [Emphasis added.]

In *Cicairos v. Summit Logistic, Inc.* (2005) 133 Cal. App. 4th 949, the Court of Appeal explained the strict requirements of California statutory and regulatory meal break law: "employers have an affirmative obligation to ensure that workers are actually relieved of all duty" during each 30-minute meal period. In addition, *Cicairos* explains that employers "also have a duty, under [the wage orders], **to record** their employees' meal periods." *Id.* at 962-963. [Emphasis added.]

The applicable regulation addressed by the *Cicairos* court provides that "[e]very employer shall keep accurate information with respect to each employee including...Time records showing when the employee begins and ends each work period. **Meal periods**, split shift intervals and total daily hours worked **shall also be recorded**. Meal periods during which operations cease ... need not be recorded. [P] ... [P] ... An employee's records shall be available for inspection by the employee upon reasonable request." Title 8 CCR § 11050 subd. (7)(A)(3) & (7)(C). [Emphasis added.] Defendant's compliance with California's strict record keeping requirement is therefore a common, class-wide question in the present litigation.

With respect to Defendant's privacy objections, the district court in *Hill v. Eddie Bauer* (C.D. Cal 2007) 242 F.R.D. 556 recently ordered the production of the defendant employer's time records containing employees' private information, such as addresses, telephone numbers, and even social security numbers. *Id.* at 565. The *Eddie Bauer* court determined that the right to privacy was outweighed by the interests of pursuing wage and hour violations on behalf of defendant's employees:

> In California, the right to privacy is set forth in Article I, Section I of the California Constitution. California courts have treated the right to privacy as a privilege in the discovery context, and, as such, have determined it is a right subject to invasion depending upon the circumstances. Thus, the privilege is subject to balancing the needs of the litigation with the sensitivity of the information/records sought. Here, as discussed above, **the Court has found**

> **plaintiff needs documents responsive to Category (3) document requests to pursue class action certification, as well as to prosecute this action, which seeks to enforce California's labor laws.** *Id.* at 562-563 [citations omitted]. [Emphasis added.]

With respect to the purportedly overbroad and oppressive scope of Plaintiff's requests, we are certainly amenable to efficient methods of document production. For instance, we will agree to an electronic production[2] of a sampling of records falling within the applicable statutory period of October 2003 to the present. As explained in another landmark wage and hour decision, *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 750, the use of statistical sampling offers an accurate and efficient method of proof in these types of cases.

Similarly, in *Eddie Bauer, supra,* the district court reasoned it was well-settled that a sampling of Defendant's employees' time records should be produced at the *precertification* stage in a wage and hour class action:

> Having determined that documents' responsive to Category (3) document requests seek relevant information regarding the putative class members that plaintiff require to pursue class action certification, and fully responding to these requests would be burdensome to defendant, **the Court finds, nevertheless, plaintiff is entitled to responsive sample information**. See, e.g., *Miller v. Air Line Pilots Ass'n, 108 F.3d 1415, 1425 (D.C. Cir. 1999)* ("[S]ome sort of sampling technique might well provide the appropriate balance between [plaintiff's] interest in data that is accessible and informative and [defendant's] concerns that the request be manageable."); *Barrus v. Dick's Sporting Goods, Inc., 465 F. Supp. 2d 224, 231-32 (W.D. N.Y. 2006)* (district court has authority to limit discovery in class action to a limit number of employer's stores or to a limited number of regions); *Smith v. Lowe's Home Centers, Inc., 236 F.R.D. 354, 357-58 (S.D. Ohio 2006).* (limiting discovery in class action litigation against employer to a "statistically significant representative sampling" is appropriate under *Fed. R. Civ. P. 26*)...Since defendant's approach seems reasonable to the Court, the Court accepts defendant's proposal regarding time-clock records and wage statements; provided, the sampling data addresses all the topics of Category (3) document requests. However, in the event plaintiff's experts are unable to devise some statistical analysis based on the sampling data, and opine they need data from all 1,800 putative class members, then plaintiff may renew her motion and the Court will consider expanding the discovery defendant must produce in response to the Category (3) document requests. At this time, the Court is of the opinion the

[2] Since your client is required under the applicable regulations to maintain accurate time records, including records of meal breaks, we are assuming that such documentation is available electronically. Your client's payroll, employee benefit and tax obligations further support our view that such records are available in electronic format, as opposed to being maintained in hard copy format in warehouses throughout California. If you disagree, a PMK deposition of your client's officer in charge of California records management will need to be taken in the short term.

discovery as limited herein should be sufficient to allow plaintiff to move for class certification, and, based on the Court's equitable powers under *Fed. R. Civ. P. 1*, discovery will be limited regarding the Category (3) document requests, as proposed by defendant. *Hill v. Eddie Bauer*, *supra*, 242 F.R.D. at 564-565.

Accordingly, please inform us within 10 days after your receipt of this letter whether your client will agree to the electronic production of a random sampling of meal break/time records, in which case we will have our Economist/Statistician prepare a sampling model for your review.

In closing, please feel free to contact me as soon as possible if you would like to discuss these discovery issues further.

Sincerely,

LAW OFFICES OF DAVID A. HUCH

David A. Huch, Esq.

cc: Derek J. Emge, EMGE & ASSOCIATES

NOTICE OF RELEASE OF PRIVATE CONTACT INFORMATION OF HOURLY EMPLOYEES OF SPHERION ATLANTIC ENTERPRISES LLC AND NOTICE OF LAWSUIT AGAINST SPHERION ATLANTIC ENTERPRISES LLC

In September 2007, a lawsuit was filed in San Diego County Superior Court on behalf of all current and former hourly, non-exempt employees employed by Spherion Atlantic Enterprises LLC ("SPHERION") during the period of September 25, 2003 to present. In November 2007, the lawsuit was removed to federal court in United States District Court, Southern District of California in San Diego, California [Case No. 07 CV 2178 W (AJB)]. The plaintiff, Philip J. Martinet, ("plaintiff") is seeking to pursue the lawsuit as a class action. The class action has not yet been certified by the Court.

In the lawsuit, plaintiff alleges that SPHERION has failed to adhere to the requirements of California's wage and hour laws, as set forth in the California Labor Code and California's Wage Orders. Specifically, plaintiff alleges that SPHERION has not provided its non-exempt employees with overtime compensation for work time in excess of eight hours per day or forty hours per week. Plaintiff also alleges that SPHERION has not provided its non-exempt employees with uninterrupted, 30-minute meal breaks during work shifts lasting longer than five hours, and has not provided its non-exempt employees with 10-minute rest periods for each four hour work period. Plaintiff also alleges that SPHERION has not paid all compensation due and owing at the time of former non-exempt employees' separation of employment, and has not reimbursed its employees for work-related expenditures incurred during the course and scope of employment with SPHERION.

SPHERION contends that it provided its hourly, non-exempt employees with all wages due and owing, including overtime compensation and separation pay. SPHERION also contends that it reimburses its employees for all work-related employee expenditures. SPHERION also contends that it provided its hourly, non-exempt employees with appropriate meal breaks, and permitted employees to take rest periods. SPHERION denies that it prevented its hourly, non-exempt employees from taking appropriate meal breaks or rest periods.

The first step in the legal process is a determination by the Court as to whether the lawsuit should proceed as a class action. As part of the process, plaintiff's counsel has requested the names and addresses for SPHERION's former and current hourly employees. In the interest of protecting your privacy rights, SPHERION has not provided this information to plaintiff's counsel but has agreed to send you this notice so that you can elect not to provide your name, address and telephone number to plaintiff's counsel.

THEREFORE, IF YOU DO NOT WANT YOUR PRIVATE CONTACT INFORMATION TO BE RELEASED TO PLAINTIFF'S COUNSEL, YOU MUST COMPLETE AND RETURN THE ENCLOSED POSTCARD NO LATER THAN __________, 2008.

Plaintiff is represented by the following attorneys:

Derek J. Emge
Emge & Associates
550 West "C" Street, Suite 1600
San Diego, CA 92101
Tel: (619) 595-1400
Fax: (619) 595-1480
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David A. Huch
Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, CA 92011
Tel: (760) 402-9528
Fax: (760) 683-3245
E-mail: dhuch@onebox.com

SPHERION is represented by the following attorneys:

Samuel T. McAdam and Brandon R. McKelvey
SEYFARTH SHAW LLP
400 Capitol Mall, Suite 2350
Sacramento, CA 95814-4428
Tel: (916) 448-0159
Fax: (916) 558-4839
E-mail: smcadam@seyfarth.com or bmckelvey@seyfarth.com

You may contact counsel for either SPHERION or Plaintiff. You may also decide to object to the disclosure of your private contact information to plaintiff's counsel. If you decide to object to such disclosure, please complete and return the enclosed postcard to the address listed on the postcard by ______, **2008. If you do not return the completed postcard by the deadline, your private contact information will be released to plaintiff's counsel.**

SPHERION will not retaliate against you in any way for responding to this notice or for contacting plaintiff's counsel or participating in anyway in this lawsuit. Please note that a decision to object to the disclosure of your private contact information will have no impact on any right you may have to participate in this case in the event it is later certified as a class action.

David A. Huch

Attorney at Law

Fax

Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, CA 92011

To: Brandon R. McKelvey		Fax:	916-558-4839
Company: SEYFARTH SHAW LLP		Tel:	916-448-0159
From: David Huch		Fax:	760-683-3245
LAW OFFICES OF DAVID A. HUCH		Tel:	760-402-9528
Number of Pages (including cover page): 13		Date:	March 19, 2008

Comments:

Exhibit K

cal_____

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES, LLC, A Delaware Limited Liability Company, Defendants.	Civil No.07cv2178 W (AJB) ORDER FOLLOWING CASE MANAGEMENT CONFERENCE

On March 21, 2008, the Court convened a Case Management Conference in the above entitled action. Appearing were David Hutch, Esq. and Derek Emge, Esq. on behalf of plaintiff; Brandon McKelvy, Esq. on behalf of defendant.

Counsel submitted a joint discovery plan. Since it was entitled "Joint Motion Regarding the Parties Discovery Plan," it is docketed as a pending motion. To clear the docket, that Motion (docket No. 17) is *denied* without prejudice.

The Court and counsel discussed the current state of pending discovery and the potential time line for the case. There is a significant discovery dispute with regard to the scope of class certification discovery. Following the discussion, it is clear that the parties have meet and conferred and remain at impasse. To address the issue, the Court sets the following schedule for defendant's Motion for a Protective Order:

1. Defendant's Motion for Protective Order will be heard ***May 16, 2008 at 10:00 a.m.***;

2. Defendant will file and serve the motion no later than ***April 18, 2008***;

3. Plaintiffs will file their opposition no later than ***May 2, 2008***; and

4. Defendant will file its reply no later than ***May 9, 2008.***

The Court will convene a Case Management Conference at the conclusion of the motion hearing on May 16, 2008 at schedule the case at otherwise appropriate.

IT IS SO ORDERED.

DATED: March 24, 2008

Hon. Anthony J. Battaglia
U.S. Magistrate Judge
United States District Court

Exhibit L

McKelvey, Brandon R.

From: dhuch@onebox.com
Sent: Monday, March 24, 2008 9:56 AM
To: McKelvey, Brandon R.
Subject: RE: Martinet v. Spherion

Thanks for the email, Brandon. I agree. Please call or email if you wish to discuss any of the discovery issues in further detail.

Sincerely,

Dave

From: McKelvey, Brandon R.
Sent: Fri, 21 Mar 2008 15:14:55 -0700
To:
Subject: Martinet v. Spherion

David,

Based on the CMC today it is my understanding that no further meet-and-confer efforts are required by the parties with respect to the present discovery dispute regarding pre-class-certification discovery. As such, we will not be responding to your March 19 letter, but instead will be filing our motion for a protective order based on the schedule set forth by the magistrate. I just wanted to confirm this because your letter asked for a response in 10 days and I did not want to give the impression that we were ignoring your letter. Please call me if you have any questions.

Regards,

Brandon

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). If you are not the intended recipient, any disclosure, copying, distribution, or use of the contents of this information is prohibited and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender that you have received the message in error, and delete it. Thank you.

Exhibit M

SEYFARTH SHAW LLP
Samuel T. McAdam (SBN 186084)
Brandon R. McKelvey (SBN 217002)
Anthony J. Musante (SBN 252097)
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Telephone: (916) 448-0159
Facsimile: (916) 558-4839

Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DEFENDANT SPHERION ATLANTIC ENTERPRISES LCC'S RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)**

PROPOUNDING PARTY: PLAINTIFF, PHILIP J. MARTINET

RESPONDING PARTY: DEFENDANT, SPHERION ATLANTIC ENTERPRISES LLC

SET NUMBER: ONE

Pursuant to FRCP 34, and all other applicable rules, defendant Spherion Atlantic Enterprises, LLC ("defendant") hereby responds to plaintiff's requests for production of documents (set one). Defendant does not admit the materiality, relevance or admissibility of the evidence of the matters set forth herein. Discovery and investigation in this matter are continuing and defendant reserves the right to supplement the responses set forth herein and to present and rely upon evidence discovered subsequent to these responses.

REQUEST NO. 1:

Produce any and all DOCUMENTS that YOU contend demonstrate the number of hours worked by PLAINTIFF, on both a daily and weekly basis, during his employment with YOU.

RESPONSE TO REQUEST NO. 1:

Defendant objects to this request on the grounds that it is vague and ambiguous and overbroad. Defendant further objects to the extent this request calls for disclosure of information protected by the attorney-client privilege and/or attorney-work-product doctrine. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 2:

Produce any and all DOCUMENTS that YOU contend demonstrate PLAINTIFF was provided with state-mandated 30-minute meal breaks during his employment with YOU.

RESPONSE TO REQUEST NO. 2:

Defendant objects to this request on the grounds that it is vague, ambiguous, and unduly burdensome. Defendant further objects to this request to the extent that it calls for a legal conclusion and for disclosure of information protected by the attorney-client privilege and/or the attorney work product doctrine. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 3:

Produce any and all DOCUMENTS that YOU contend demonstrate YOUR California-based non-exempt employees, other than PLAINTIFF, have been provided with state-mandated 30-minute meal breaks from September 2003 to the present.

RESPONSE TO REQUEST NO. 3:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 4:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR meal break policies are dependent upon a non-exempt employee's job duties.

RESPONSE TO REQUEST NO. 4:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule

23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 6: [sic]

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR meal break policies are dependent upon a non-exempt employee's job title.

RESPONSE TO REQUEST NO. 6:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations.

Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 7:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR overtime compensation policies are dependent upon a non-exempt employee's job duties.

RESPONSE TO REQUEST NO. 7:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 8:

Produce any and all DOCUMENTS, PERTAINING TO YOUR California-based non-exempt employees from September 2003 to the present, that demonstrate how YOUR overtime compensation policies are dependent upon a non-exempt employee's job title.

RESPONSE TO REQUEST NO. 8:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent that it seeks information protected by Spherion employees' right of privacy. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 9:

Produce PLAINTIFF's personnel file in its entirety.

RESPONSE TO REQUEST NO. 9:

Copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 10:

Produce any and all employee handbooks that YOU have distributed to YOUR California-based non-exempt employees that were in force and effect from September 2003 to the present.

RESPONSE TO REQUEST NO. 10:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request.

REQUEST NO. 11:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing state-mandated 30-minute meal breaks to YOUR California-based non-exempt employees.

RESPONSE TO REQUEST NO. 11:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 12:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing state-mandated 10-minute rest periods to YOUR California-based non-exempt employees.

RESPONSE TO REQUEST NO. 12:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 13:

Produce any and all DOCUMENTS, dated from January 1, 2003 to the present, PERTAINING TO YOUR policies and procedures for providing overtime compensation to YOUR California-based non-exempt employees.

RESPONSE TO REQUEST NO. 13:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 14:

Produce any and all DOCUMENTS that PLAINTIFF has signed relating to the obtaining, holding or termination of her (sic) employment with YOU.

RESPONSE TO REQUEST NO. 14:

Defendant objects to this request on the grounds that it is vague, ambiguous, and overbroad. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 15:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO taking 30-minute meal breaks.

RESPONSE TO REQUEST NO. 15:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 16:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO taking 10-minute rest periods.

RESPONSE TO REQUEST NO. 16:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 17:

Produce any and all DOCUMENTS relating to any training YOU have given any of YOUR California-based non-exempt employees, from January 1, 2003 to the present, PERTAINING TO the payment of overtime compensation for hours worked in excess of eight hours per day or forty hours per week.

RESPONSE TO REQUEST NO. 17:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 18:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees taking 30-minute meal breaks.

RESPONSE TO REQUEST NO. 18:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request.

Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 19:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees taking 10-minute rest periods.

RESPONSE TO REQUEST NO. 19:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 20:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees working overtime hours.

RESPONSE TO REQUEST NO. 20:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 21:

Produce any and all DOCUMENTS relating to any studies YOU have conducted, from January 1, 2003 to the present, PERTAINING TO YOUR California-based non-exempt employees being paid overtime compensation.

RESPONSE TO REQUEST NO. 21:

Defendant objects to this request on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this request is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the documents sought by this request are irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the request is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This request is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this request. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine.

REQUEST NO. 22:

Produce any and all written communications, including Email communications, between PLAINTIFF and any of YOUR employees, managers, officers, directors or managing agents.

RESPONSE TO REQUEST NO. 22:

Defendant objects to this request on the grounds that it is vague, ambiguous, and unduly burdensome. Defendant further objects to this request to the extent it seeks disclosure of information protected by the attorney-client privilege and/or the attorney-work-product doctrine. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 23:

Produce PLAINTIFF's payroll records.

RESPONSE TO REQUEST NO. 23:

Defendant objects to this request on the grounds that it is vague, ambiguous, and unduly burdensome. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

REQUEST NO. 24:

Produce any and all notices of commendation, warning and/or discipline relating to PLAINTIFF's employment with YOU.

RESPONSE TO REQUEST NO. 24:

Defendant objects to this request on the grounds that it is vague, ambiguous, and unduly burdensome. Without waiving any objections, defendant responds as follows: copies of all non-privileged documents to the extent that they exist and are responsive to the request will be provided.

DATED: April 2, 2008

SEYFARTH SHAW LLP

BY____________________
Samuel T. McAdam
Brandon R. McKelvey
Anthony J. Musante
Attorneys For Defendants
SPHERION ATLANTIC ENTERPRISES LLC;
SPHERION PACIFIC WORKFORCE LLC

Verification to Follow

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On April 2, 2008, I served the within documents:

DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS (SET ONE)

☐ I sent such document from facsimile machine (916) 558-4839 on April 2, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at 400 Capitol Mall, Suite 2350, Sacramento, California 95814, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Sacramento, California, addressed as set forth below.

Derek J. Emge
Emge & Associates
550 West C Street, Suite 1600
San Diego, CA 92101
(619) 595-1400
(619) 595-1480

David A. Huch
Law Offices of David A. Huch
7040 Avenida Encinas, Suite 104
Carlsbad, CA 92011-4654
(760) 402-9528
(760) 683-3245

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on April 2, 2008, at Sacramento, California.

[signature]
Elizabeth Holmes

Exhibit N

SEYFARTH SHAW LLP
Samuel T. McAdam (SBN 186084)
Brandon R. McKelvey (SBN 217002)
Anthony J. Musante (SBN 252097)
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
Telephone: (916) 448-0159
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Attorneys for Defendants
SPHERION ATLANTIC ENTERPRISES LLC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S INTERROGATORIES (SET ONE)**

PROPOUNDING PARTY: PLAINTIFF, PHILIP J. MARTINET

RESPONDING PARTY: DEFENDANT, SPHERION ATLANTIC ENTERPRISES LLC

SET NUMBER: ONE

Pursuant to FRCP 33 and all other applicable rules, defendant Spherion Atlantic Enterprises, LLC ("defendant") hereby responds to plaintiff's Interrogatories (Set One). Defendant does not admit the materiality, relevance or admissibility of the evidence of the matters set forth herein. Discovery and investigation in this matter are continuing and defendant reserves the right to supplement the responses set forth herein and to present and rely upon evidence discovered subsequent to these responses.

INTERROGATORY NO. 1:

IDENTIFY all of YOUR California-based non-exempt employees who are currently employed by YOU or were previously employed by YOU from September 2003 to the present.

RESPONSE TO INTERROGATORY NO. 1:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory. Defendant further objects to this interrogatory to the extent that it seeks information protected by Spherion employees' right of privacy.

INTERROGATORY NO. 2:

State the total number of California-based non-exempt employees YOU have employed from September 2003 to the present.

RESPONSE TO INTERROGATORY NO. 2:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees" and employees "employed" by Defendant. Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

INTERROGATORY NO. 3:

State the total number of California-based non-exempt employees YOU have employed per each pay period from December 2006 to the present.

RESPONSE TO INTERROGATORY NO. 3:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees" and employees "employed" by Defendant. The interrogatory is further vague and ambiguous with respect to the term "pay-period." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

INTERROGATORY NO. 4:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO meal breaks for YOUR California-based non-exempt employees that are dependent upon an employee's job duties?

RESPONSE TO INTERROGATORY NO. 4:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties defendant maintained the same policies pertaining to meal breaks.

INTERROGATORY NO. 5:

If YOUR response to Interrogatory No. 4, above, is in the affirmative, identify all such differences in YOUR meal break policies.

RESPONSE TO INTERROGATORY NO. 5:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties defendant maintained the same policies pertaining to meal breaks.

INTERROGATORY NO. 6:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO meal breaks for YOUR California-based non-exempt employees that are dependent upon an employee's job title?

RESPONSE TO INTERROGATORY NO. 6:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job title defendant maintained the same policies pertaining to meal breaks.

INTERROGATORY NO. 7:

If YOUR response to Interrogatory No. 6, above, is in the affirmative, identify all such differences in YOUR meal break policies.

RESPONSE TO INTERROGATORY NO. 7:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project defendant maintained the same policies pertaining to meal breaks.

INTERROGATORY NO. 8:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO paying overtime compensation to YOUR California-based non-exempt employees that are dependent upon an employee's job duties?

RESPONSE TO INTERROGATORY NO. 8:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties defendant maintained the same policies pertaining to paying overtime compensation.

INTERROGATORY NO. 9:

If YOUR response to Interrogatory No. 8, above, is in the affirmative, identify all such differences in YOUR overtime compensation policies.

RESPONSE TO INTERROGATORY NO. 9:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties defendant maintained the same policies pertaining to paying overtime compensation.

INTERROGATORY NO. 10:

From September 2003 to the present, have YOU maintained different policies PERTAINING TO paying overtime compensation to YOUR California-based non-exempt employees that are dependent upon an employee's job title?

RESPONSE TO INTERROGATORY NO. 10:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project defendant maintained the same policies pertaining to paying overtime compensation.

INTERROGATORY NO. 11:

If YOUR response to Interrogatory No. 10, above, is in the affirmative, identify all such differences in YOUR overtime compensation policies.

RESPONSE TO INTERROGATORY NO. 11:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Defendant anticipates that providing a response would be an enormous undertaking that would cost thousands of dollars and require hundreds of hours of human labor. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project defendant maintained the same policies pertaining to paying overtime compensation.

INTERROGATORY NO. 12:

Have all of YOUR California-based non-exempt employees received their pay through a common payroll system between September 2003 and the present?

RESPONSE TO INTERROGATORY NO. 12:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that "payroll system" is vague and ambiguous as it relates to plaintiff's putative class case. Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: As to plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties defendant maintained a common payroll system.

INTERROGATORY NO. 13:

If YOUR response to Interrogatory No. 12, above, is in the negative, identify all payroll systems YOU have used to pay YOUR California-based non-exempt employees from September 2003 to the present.

RESPONSE TO INTERROGATORY NO. 13:

Defendant objects to this interrogatory on the grounds that it is vague and ambiguous and calls for a legal conclusion as to the identification of defendant's "California based non-exempt employees." Defendant further objects on the grounds that "payroll system" is vague and ambiguous as it relates to plaintiff's putative class case. Defendant further objects on the grounds that this interrogatory is premature because plaintiff has not yet established a prima facie showing that the class action requirements of Rule 23 are satisfied or that this discovery is likely to produce substantiation of the class allegations. Defendant further objects to this request on the grounds it is not reasonably calculated to lead to the discovery of admissible evidence as the information sought by this interrogatory is irrelevant to the certification of a class of employees who are similarly situated to and share typicality and commonality with the plaintiff. Defendant further objects that the interrogatory is unreasonably broad, unduly burdensome, and oppressive. Defendant is a unique business entity with numerous decentralized offices, franchises, and divisions throughout the state that serve thousands of different clients pursuant to hundreds of different contracts and policies. This interrogatory is an impermissible fishing expedition as it relates to thousands of employees at hundreds of locations throughout the state subject to diverse working conditions. Consequently, defendant is moving for a protective order under Federal Rule of Civil Procedure 26(c) forbidding or narrowing the scope of this interrogatory.

Without waiving any objections, defendant responds as follows: Plaintiff and those PC Technicians on the VSSD-NMCI project sharing his job duties were paid through Recruiter Workbench.

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DATED: April 2, 2008

SEYFARTH SHAW LLP

BY ______________________________
Samuel T. McAdam
Brandon R. McKelvey
Anthony J. Musante
Attorneys For Defendants
SPHERION ATLANTIC ENTERPRISES LLC;
SPHERION PACIFIC WORKFORCE LLC

Verification to Follow

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF SACRAMENTO)

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Seyfarth Shaw LLP, 400 Capitol Mall, Suite 2350, Sacramento, California 95814-4428. On April 2, 2008, I served the within documents:

DEFENDANT SPHERION ATLANTIC ENTERPRISES LLC'S RESPONSE TO PLAINTIFF'S INTERROGATORIES (SET ONE)

☐ I sent such document from facsimile machine (916) 558-4839 on April 2, 2008. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (916) 558-4839 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties listed below.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at 400 Capitol Mall, Suite 2350, Sacramento, California 95814, addressed as set forth below.

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by placing the document(s) listed above, together with an unsigned copy of this declaration, in a sealed Federal Express envelope with postage paid on account and deposited with Federal Express at Sacramento, California, addressed as set forth below.

Derek J. Emge	David A. Huch
Emge & Associates	Law Offices of David A. Huch
550 West C Street, Suite 1600	7040 Avenida Encinas, Suite 104
San Diego, CA 92101	Carlsbad, CA 92011-4654
(619) 595-1400	(760) 402-9528
(619) 595-1480	(760) 683-3245

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on April 2, 2008, at Sacramento, California.

E Holmes

Elizabeth Holmes